UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM 10-K

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

For the fiscal year ended December 31, 2016

OR

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

For the transition period from to

Commission file number 1-12522

EMPIRE RESORTS, INC.

(Exact name of registrant as specified in its charter)

Delaware	**13-3714474**
(State or other jurisdiction of incorporation or organization)	(I.R.S. Employer Identification No.)
c/o Monticello Casino and Raceway, 204 State Route 17B, P.O. Box 5013, Monticello, NY	**12701**
(Address of principal executive offices)	(Zip Code)

(845) 807-0001
Registrant's telephone number, including area code

Securities registered under Section 12(b) of the Act:

Title of each class	**Name of each exchange on which registered**
Common Stock, $.01 par value per share	NASDAQ Global Market

Securities registered under Section 12(g) of the Act:
None
(Title of class)

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. Yes ☐ No ☒

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act. Yes ☐ No ☒

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes ☒ No ☐

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate website, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§ 232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes ☒ No ☐

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K (§229.405 of this chapter) is not contained herein, and will not be contained, to the best of registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K. ☒

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

Large accelerated filer	☐	Accelerated filer	☒
Non-accelerated filer	☐	Smaller reporting company	☐

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

The aggregate market value of the issuer's common equity held by non-affiliates, as of June 30, 2016 was $52,294,868 based on the closing price of the registrant's common stock on the NASDAQ Global Market.

As of March 10, 2017, there were 31,187,247 shares of the registrant's common stock outstanding.

DOCUMENTS INCORPORATED BY REFERENCE
None.

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PART I

FORWARD-LOOKING STATEMENTS

This Annual Report on Form 10-K contains forward-looking statements about management's current expectations. Examples of such forward-looking statements include discussions of the expected results of various strategies. Although we believe that our expectations are based upon reasonable assumptions, there can be no assurance that our financial goals will be realized. Our forward-looking statements concern matters that involve known and unknown risks, uncertainties and other factors that may cause our actual results, performance or achievements, or industry results, to be materially different from the future results, performance or achievements described or implied by such forward-looking statements. Numerous factors may affect our actual results and may cause results to differ materially from those expressed in the forward-looking statements made by us or on our behalf. Any statements that are not statements of historical fact may be forward-looking statements. Among others, we have used the words, "believes," "anticipates," "plans," "estimates," and "expects" to identify forward-looking statements. Such statements may be considered forward looking statements within the meaning of Section 21E of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), and Section 27A of the Securities Act of 1933, as amended (the "Securities Act"). Factors that could cause actual results, performance or achievements to differ materially from those expressed or implied by these forward-looking statements include, but are not limited to, the risk factors set forth in Item 1A of this Annual Report on Form 10-K. Readers are cautioned not to place undue reliance on these forward-looking statements, which speak only as of the date of this filing. We assume no obligation to update the forward-looking statements to reflect actual results or changes in the factors affecting such forward-looking statements.

Item 1. Business.

Overview

Empire Resorts, Inc. ("Empire," and, together with its subsidiaries, the "Company," "us," "our" or "we") was organized as a Delaware corporation on March 19, 1993, and since that time has served as a holding company for various subsidiaries engaged in the hospitality and gaming industries.

On December 21, 2015, our indirect wholly-owned subsidiary, Montreign Operating Company, LLC ("Montreign Operating"), was awarded a gaming license (a "Gaming Facility License") by the New York State Gaming Commission ("NYSGC") to operate a resort casino (the "Casino Project") to be located at the site of a four-season destination resort being developed in the Town of Thompson in Sullivan County, approximately 90 miles from New York City (the "Destination Resort"), which is described below. Montreign Operating is the sole holder of a Gaming Facility License in the Hudson Valley-Catskill Area, which consists of Columbia, Delaware, Dutchess, Greene, Orange, Sullivan and Ulster counties in New York State. The Gaming Facility License became effective on March 1, 2016.

The Destination Resort is located on approximately 1,700 acres (the "EPT Property") owned by EPT Concord II, LLC ("EPT") and EPR Concord II, L.P. ("EPR LP"), two wholly-owned subsidiaries of EPR Properties, an entity unrelated to the Company. The Casino Project is part of the initial phase of the Destination Resort, which will also include an Indoor Waterpark Lodge (the "Waterpark"), a Rees Jones-redesigned "Monster" Golf Course (the "Golf Course Project") and an Entertainment Village, which will include hotel, retail, restaurants and other amenities (the "Entertainment Village Project" and, together with the Casino Project and the Golf Course Project, the "Development Projects"). In addition to the Casino Project, subsidiaries of Montreign Operating are responsible for developing the Entertainment Village Project and the Golf Course Project. Subsidiaries of EPR Properties are responsible for developing the Waterpark.

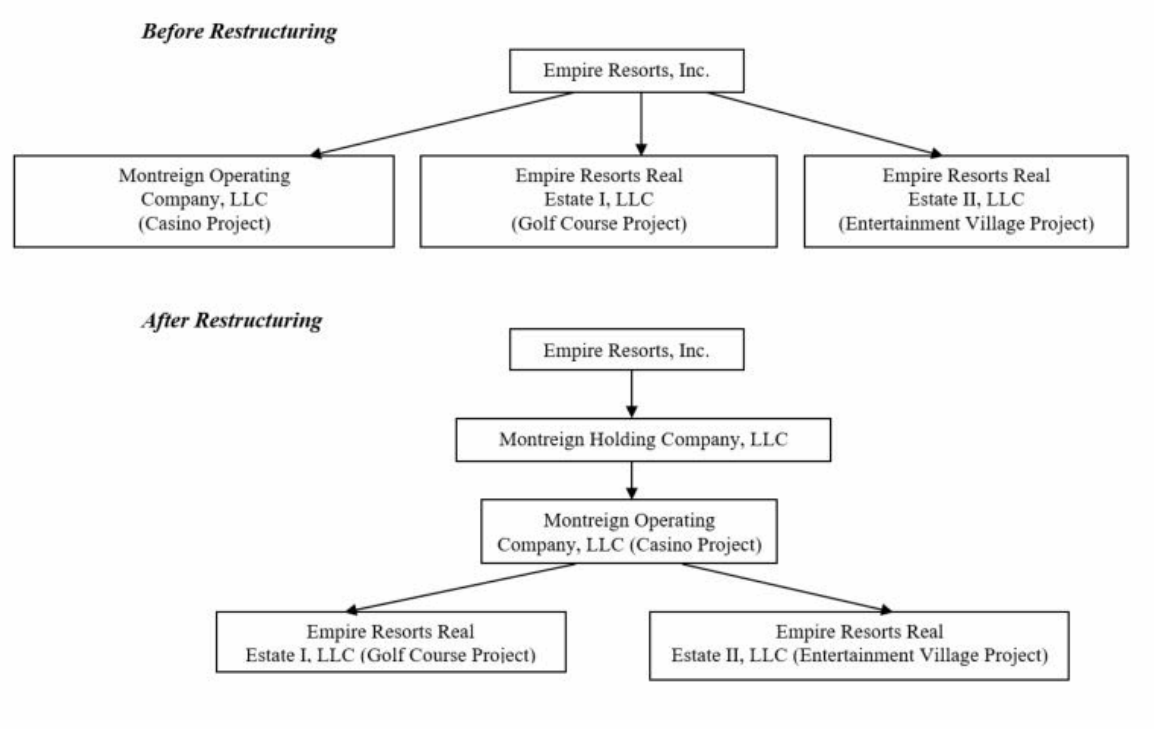
Through our wholly-owned subsidiary, Monticello Raceway Management, Inc. ("MRMI"), we currently own and operate Monticello Casino and Raceway, a 45,000-square foot video gaming machine ("VGM") and harness horseracing facility located in Monticello, New York, approximately 90 miles northwest of New York City. Monticello Casino and Raceway operates 1,110 VGMs, which includes 1,070 video lottery terminals ("VLTs") and 40 electronic table game positions ("ETGs"). VGMs are similar to slot machines, but they are connected to a central system and report financial information to the central system. ETGs include the games of roulette, blackjack and 3-card poker. We also generate racing revenues through pari-mutuel wagering on the running of live harness horse races, the import simulcasting of harness and thoroughbred horse races from racetracks across the country and internationally, and the export simulcasting of our races to offsite pari-mutuel wagering facilities.

In a letter dated December 23, 2016, the NYSGC approved MRMI's racetrack and simulcast license renewal applications for calendar year 2017. Generally, the annual license renewal process requires the NYSGC to review the financial responsibility, experience, character and general fitness of MRMI and its management.

Recent Events

Corporate Restructuring

In January 2017, the Company undertook certain corporate restructuring. In particular, Empire created Montreign Holding Company, LLC ("Montreign Holding"), a wholly-owned subsidiary, to which it contributed all of its membership interests in Montreign Operating, which was formerly a wholly-owned subsidiary of Empire. Concurrently, Empire contributed to Montreign Operating all of its membership interests in each of Empire Resorts Real Estate I, LLC ("ERREI"), which is developing the Golf Course Project, and Empire Resorts Real Estate II, LLC ("ERREII" and together with ERREI, the "Montreign Subsidiaries" and, together with ERREI and Montreign Operating, the "Project Parties"), which is developing the Entertainment Village Project, each of which were formerly wholly-owned subsidiaries of Empire. The diagram below illustrates the Company's organization as to these entities before and after the restructuring:



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Debt Financing for the Development Projects

On January 24, 2017, Montreign Operating closed a senior secured first lien term loan facility, which provides an aggregate principal amount of $485 million of senior secured first lien term loans, consisting of $70 million of Term A loans and $415 million of Term B loans. In addition, on the same date, Montreign Operating entered into a senior secured revolving credit facility in the amount of $15 million. The net proceeds of the senior secured term facility will be used to fund costs relating to the construction of the Development Projects and the proceeds of the senior secured revolving credit facility will be used for working capital, capital expenditures and other general corporate expenses of Montreign Operating following the opening of the Casino Project to the public. The obligations of Montreign Operating under the aforementioned loan facilities are guaranteed by the Montreign Subsidiaries and are secured by security interests in substantially all of the assets of the Project Parties, as well as by a pledge of the membership interests in Montreign Operating by Montreign Holding. In connection with the senior secured term facility, Empire provided a guaranty capped at $30 million on the completion of construction of the Casino Project and the Entertainment Village Project. Please see "*Business - The Destination Resort and the Development Projects - Term Loan Agreement and Revolving Credit Agreement*" below for more information.

Kien Huat Montreign Loan Agreement

On January 24, 2017, Kien Huat Realty III Limited ("Kien Huat"), Empire's largest stockholder, and Montreign Holding entered into a loan agreement (the "Kien Huat Montreign Loan Agreement"), pursuant to which Montreign Holding obtained from Kien Huat a loan in the principal amount of $32.3 million (the "Kien Huat Montreign Loan"). The net proceeds of the Kien Huat Montreign Loan will be used as a capital contribution to Montreign Operating for use towards the development and operating expenses of the Development Projects. The obligations of Montreign Holding under the Kien Huat Montreign Loan Agreement are secured by a pledge of all the membership interests of Montreign Holding by Empire. Please see "*Business - The Destination Resort and the Development Projects - Kien Huat Montreign Loan Agreement*" below for more information.

The Destination Resort and the Development Projects

The Destination Resort is located on the EPT Property in the Town of Thompson in Sullivan County, New York. The Casino Project is part of the initial phase of the Destination Resort, which will also include the Waterpark, the Golf Course Project and the Entertainment Village Project (the Casino Project, the Waterpark, the Golf Course Project and the Entertainment Village Project, collectively the “Initial Projects”). The Company currently expects the construction of the Development Projects will cost approximately $909 million, which includes $744 million of currently expected costs for the Development Projects, $72 million for contingency and interest reserves, $51 million for the Gaming Facility License fee and $42 million of original issue discount and financing and legal fees.

The Casino Project

The Casino Project is designed to meet five-star and five-diamond standards and is expected to include:

- a 95,200-square foot casino floor featuring 2,150 slot machines and 130 table games, which will include Asian-themed games, and a 16 – 18 table poker room;
- designated VIP/high-limit areas located within the main gaming floor, which will offer a minimum of 26 slot machines, eight table games, and a player’s lounge offering food and beverage;
- an 18-story hotel tower containing 332 luxury rooms (including at least eight 1,000 – 1,200-square foot garden suites, seven 2,400-square foot two-story townhouse villas, and 12 penthouse-level suites), indoor pools and two fitness centers;
- a separate private gaming area containing six private VIP gaming salons, a 10-game pit, a private gaming cage, and butler service;
- 27,000 square feet of multi-purpose meeting and entertainment space with seating capacity for 2,000 people and a mezzanine level that includes access to outdoor terraces and approximately 7,000 square feet of meeting room space;

- a 7,500-square foot spa located on the VIP level; and
- eight restaurants and seven bars.

As of February 28, 2017, approximately 85% of the Guaranteed Maximum Price (defined below)(see "*Business - The Destination Resort and the Development Projects - LP Ciminelli*" below for more information) under the construction manager agreement with LP Ciminelli for the Casino Project has been contracted. Additionally, approximately 45% of the construction of the Casino Project is complete.

Gaming Facility License

The Gaming Facility License became effective on March 1, 2016. The Gaming Facility License will have an initial duration of 10 years from March 1, 2016. It will be renewable thereafter for a period of at least an additional ten years, as determined by the NYSGC. The Gaming Facility License is also subject to certain conditions established by the NYSGC, including the following:

- the payment of an aggregate license fee of $51 million, which was paid on March 30, 2016;
- causing the investment of not less than approximately $854 million (the "Minimum Capital Investment") in the development of the Initial Projects and infrastructure for the Destination Resort in accordance with the submitted plans for the Casino Project and the Destination Resort;
- deposit of a bond representing10% of the Minimum Capital Investment (the "Minimum Capital Investment Deposit"), which was completed on March 1, 2016;
- commencement of gaming operations on or before March 1, 2018;
- compliance with New York State minority-owned and woman-owned business enterprise ("MWBE") requirements with respect to the Casino Project; and
- the creation of a minimum of 1,425 full-time and 96 part-time jobs.

The Golf Course Project and the Entertainment Village Project

ERREI and ERREII are responsible for the development and construction of the Golf Course Project and the Entertainment Village Project, respectively. The development of the Entertainment Village Project is expected to be built-out in phases. The Company is currently preparing the design plans for the Entertainment Village Project, which will consist of a non-gaming hotel with 100-200 guest rooms as well as dining, entertainment and retail offerings. The targeted rating for this hotel and its related amenities is in the range of 3-Star and 3-Diamond standards to serve mid-market customers. On December 8, 2016, the Company submitted to the Town of Thompson Planning Board (the "Planning Board") an application for the approval for the site plan for the hotel to be located within the Entertainment Village Project. The Planning Board held a special public hearing to consider the application on March 1, 2017.

ERREI has obtained final site approval from the Planning Board for, and has begun site preparation of, the redesign of the Golf Course Project. On December 28, 2016, the Planning Board extended this site plan approval for a period of six months to allow the Company to coordinate the commencement of construction and to obtain final approval of updates to the wetlands permits from the United States Army Corps of Engineers and the New York State Department of Environmental Conservation, if required.

Master Development Agreement and Completion Guaranties

On December 28, 2015 (the "MDA Effective Date"), the Project Parties, on the one hand, and EPT, EPR LP and Adelaar Developer, LLC (the "Destination Resort Developer," together with EPT and EPR LP collectively, "EPR"), on the other hand, entered into an Amended and Restated Master Development Agreement (as amended, the "MDA"), which amends and restates that certain master development agreement by and between EPT and MRMI originally executed on December 14, 2012. The MDA defines and governs the overall relationship between EPR and the Project Parties with respect to the development, construction, operation, management and disposition of the Initial Projects.

In accordance with the terms of the MDA, the Project Parties shall each be responsible for the development and construction of their portion of the Development Projects. On December 28, 2015, Empire entered into a Completion Guaranty, guaranteeing completion of the development and construction obligations of the Project Parties described in this paragraph.

In accordance with the terms of the MDA, EPR is responsible for the development and construction of the Waterpark and the common infrastructure-related improvements (such as streets, sidewalks, sanitary and storm sewer lines, water, gas, electric, telephone and other utility lines, systems, conduits and other similar facilities) for the Destination Resort. EPR has agreed to be responsible for the development and construction of the Waterpark with a minimum capital investment of $120 million, and the infrastructure for the Destination Resort. EPR financed the costs of the infrastructure by the issuance of tax-exempt bonds by a local development corporation. The debt service for these infrastructure bonds will be funded through special district tax assessments, a portion of which will be allocated to each of the parcels on which the Initial Projects are being built. EPR and the Project Parties have agreed to a capped dollar amount on the special district tax assessment for each of the parcels on which the Development Projects are being built, above which the Project Parties will not be responsible. On December 28, 2015, EPR Properties, a real estate investment trust and the parent company of EPR, entered into a Completion Guaranty, guaranteeing completion of the development and construction obligations of EPR described in this paragraph.

Neither party has the right to terminate the MDA unless Montreign Operating fails to exercise the Purchase Option (as defined below) prior to its expiration in accordance with the terms and conditions of the Purchase Option Agreement (as defined below).

On January 24, 2017, the MDA was amended to (a) reflect that EPR has secured bond financing in connection with its infrastructure development obligations and (b) account for increases in the common infrastructure budget (and corresponding increases in Empire's common infrastructure cap amount) in connection with the development of additional roads and increase in the budgeted amounts for New York State Electric and Gas costs. The changes to Empire's common infrastructure cap amount were also reflected in each of the amendments to the Casino Lease, Golf Course Lease and Entertainment Village Lease.

Development Project Parcel Leases and Purchase Option Agreement

On December 28, 2015, the Project Parties entered into the Casino Lease, the Golf Course Lease, the Entertainment Village Lease and the Purchase Option Agreement (each as defined and described in "*Properties - EPT Property*" below). Option payments made by the Company pursuant to that certain option agreement, originally executed on December 21, 2011 and last amended on June 20, 2014 (the "Original Option Agreement"), which total $8.5 million, were applied against rent amounts due to EPT as rent under the Casino Lease, as more fully described below. The Original Option Agreement, which granted the Company the right to lease the Casino Parcel, was superseded by the Casino Lease, Golf Course Lease and the Entertainment Village Lease, which are described below in "*Properties - EPT Property*".

Term Loan Agreement and Revolving Credit Agreement

Term Loan Agreement

On January 24, 2017 (the "Loan Closing Date"), Montreign Operating entered into a Building Term Loan Agreement (the "Term Loan Agreement"), among Montreign Operating, the lenders from time to time party thereto, and Credit Suisse AG, Cayman Islands Branch ("Credit Suisse"), as administrative agent. The Term Loan Agreement provides for loans to be made to Montreign Operating in an aggregate principal amount of $485 million (the "Term Loan Facility").

The Term Loan Facility consists of $70 million of Term A loans (the "Term A Loan") and $415 million of Term B loans (the "Term B Loan"). The Term B Loan was borrowed in full on the Loan Closing Date and the proceeds were used to pay fees and expenses related to the financing and fund various lender-controlled accounts. The proceeds of the Term Loan Facility (including proceeds of the Term A Loan, which will be deposited into the lender-controlled accounts upon borrowing) will be made available to Montreign Operating, subject to Montreign Operating satisfying the disbursement conditions set forth in the Term Loan Agreement and related loan documents, to pay debt service and costs relating to the development and construction of the Development Projects.

The Term A Loan may be borrowed during the period from the Loan Closing Date to July 24, 2018, subject to meeting the conditions set forth in the Term Loan Agreement at the time of the borrowing. The Term A Loan will mature on January 24, 2022 and the Term B Loan will mature on January 24, 2023. Interest will accrue on outstanding borrowings under the Term A Loan at a rate equal to LIBOR plus 5.0% per annum, or an alternate base rate plus 4.0% per annum. Interest will accrue on

outstanding borrowings under the Term B Loan at a rate equal to LIBOR (with a LIBOR floor of 1%) plus 8.25% per annum, or an alternate base rate plus 7.25% per annum. In addition, Montreign Operating will pay a commitment fee to each Term A Loan lender ("Term A Lender") equal to the undrawn amount of such Term A Lender's Term A Loan commitment multiplied by a rate equal to 2.5% per annum for the period commencing on the Loan Closing Date through March 24, 2018 and 5.0% per annum thereafter.

In the event that the Term B Loan is prepaid or repaid in whole or in part for any reason other than as a result of scheduled amortization and certain other exceptions, Montreign Operating is required to pay pre-payment premiums based on a make-whole if the prepayment occurs from the Loan Closing Date to (but excluding) the 30th-month anniversary following the Loan Closing Date (the "30th Month"), and a 2% and 1% premium if the prepayment occurs from the 30th Month to (but excluding) the 42nd-month anniversary of the Loan Closing Date (the "42nd Month") and from the 42nd Month to (but excluding) the 54th-month anniversary of the Loan Closing Date, respectively.

Revolving Credit Agreement

On the Loan Closing Date, Montreign Operating also entered into a Revolving Credit Agreement (the "Revolving Credit Agreement") among Montreign Operating, the lenders from time to time party thereto, and Fifth Third Bank, as administrative agent. The Revolving Credit Agreement provides for loans or other extensions of credit to be made to Montreign Operating in an aggregate principal amount of up to $15 million (including a letter of credit sub-facility of $10 million) (the "Revolving Credit Facility"), the proceeds of which may be used for working capital needs, capital expenditures and other general corporate purposes following the opening of the Casino Project to the public. The Revolving Credit Facility will mature on January 24, 2022. Interest will accrue on outstanding borrowings at a rate equal to LIBOR plus 5.0% per annum, or an alternate base rate plus 4.0% per annum.

Collateral and Other Provisions

The Term Loan Facility and the Revolving Credit Facility are each guaranteed by the Montreign Subsidiaries and are secured by security interests in substantially all the real and personal property of Montreign Operating and the Montreign Subsidiaries and by a pledge of all the membership interests of Montreign Operating held by Montreign Holding. In addition, Empire delivered a completion guaranty in connection with the Term Loan Facility guaranteeing the completion of the construction of the Casino Project and the Entertainment Village Project. Empire's liability under the completion guaranty (excluding lender's enforcement costs) is capped at $30 million.

The Term Loan Agreement and the Revolving Credit Agreement contain representations, warranties, affirmative covenants, negative covenants and financial covenants that are usual and customary, including representations, warranties and covenants that, among other things, restrict the ability of Montreign Operating and the Montreign Subsidiaries to incur additional debt, incur or permit liens on assets, make investments and acquisitions, consolidate or merge with any other company, or make dividends or other distributions. Additionally, Montreign Operating is required to deposit $35 million into the lender-controlled account holding the net proceeds of the Term Loan Facility and the Kien Huat Montreign Loan, which amount will be used towards the Entertainment Village Project. Of this payment, $15 million is required to be deposited by June 30, 2017 and the remaining $20 million is required to be deposited by December 31, 2017. The $35 million must be funded in the form of a further equity contribution to Montreign Operating. The Company expects to raise additional equity capital to cover these amounts by the dates on which the deposits must be made. Obligations under the Term Loan Agreement and the Revolving Credit Agreement may be accelerated upon certain customary events of default (subject to grace periods, as appropriate), including, among others: nonpayment of principal, interest or fees; breach of the affirmative or negative covenants; revocation of a gaming license for seven consecutive business days; and a change of control (as such term is defined in the Term Loan Agreement) of Montreign Operating.

To further fund the Development Projects, on January 24, 2017, Montreign Operating entered into the Term Loan Agreement and Montreign Holding entered into the Kien Huat Montreign Loan Agreement. In connection with the consummation of the Term Loan Agreement, on the Loan Closing Date, that certain construction loan agreement (the "Kien Huat Construction Loan Agreement") dated October 13, 2016, by and between Kien Huat and Montreign Operating expired on its terms without being utilized by Montreign Operating. Montreign Operating and Kien Huat had entered into the Kien Huat Construction Loan Agreement to provide Montreign Operating with short-term access to up to $50 million of loans to pay the expenses of the Casino Project while the debt financing for the Development Projects was being finalized.

Kien Huat Montreign Loan Agreement

On the Loan Closing Date, Kien Huat and Montreign Holding entered into the Kien Huat Montreign Loan Agreement, pursuant to which Montreign Holding obtained from Kien Huat a loan in the principal amount of $32.3 million, the net proceeds of which will be used as a capital contribution to Montreign Operating for use towards the expenses of the Development Projects. The Kien Huat Montreign Loan shall mature on February 24, 2024 (the "Kien Huat Loan Maturity Date"), which Kien Huat Loan Maturity Date may be extended by Kien Huat in its sole discretion by up to an additional year.

The Kien Huat Montreign Loan bears interest at a rate of 12% per annum. Prior to the Kien Huat Loan Maturity Date, interest on the Kien Huat Montreign Loan shall accrue and be added to the outstanding principal of the Kien Huat Montreign Loan (the "Principal Indebtedness") on the first business day of each calendar month beginning on February 1, 2017 (each an "Interest Payment Date") and shall thereafter be deemed to be part of the Principal Indebtedness. The Principal Indebtedness, including all interest due through the applicable Interest Payment Date and other amounts due under the Kien Huat Montreign Loan, shall be payable in cash on the Kien Huat Loan Maturity Date. Notwithstanding the foregoing, Montreign Holding shall be required to pay in cash to Kien Huat, at the end of any "accrual period" (as defined in Section 1275(a)(5) of the Internal Revenue Code of 1986, as amended (the "Code")) ending after the fifth anniversary of the Loan Closing Date the aggregate amount by which (x) the sum of (i) the amount of accrued interest on the Kien Huat Montreign Loan that has been added to the Principal Indebtedness plus (ii) any other accrued but unpaid original issue discount (as determined under Section 163(i) of the Code) on the Kien Huat Montreign Loan from the closing date through the end of such accrual period, in each case that has not been paid in cash, exceeds (y) the product of (i) the "issue price" (as defined for purposes of the Code) and (ii) the "yield to maturity" (as defined for purposes of the Code). In addition to the interest payable on the Kien Huat Montreign Loan, Kien Huat was entitled to a commitment fee of 1%, which fee was added to the Principal Indebtedness of the Kien Huat Montreign Loan on the Loan Closing Date.

Until the Kien Huat Montreign Loan is repaid in full, Montreign Holding shall make no dividend or other distributions to Empire except (i) for purposes of paying bona fide corporate overhead expenses in an amount not to exceed $9 million (which amount is subject to further reduction pursuant to the Kien Huat Montreign Loan Agreement) and (ii) for purposes of the payment of taxes by Empire, to the extent also permitted by the Term Loan Agreement with respect to distributions from Montreign Operating. The Kien Huat Montreign Loan may be prepaid in full or in part at any time without premium or penalty.

The obligations of Montreign Holding under the Kien Huat Montreign Loan Agreement are secured by a pledge of all the membership interests of Montreign Holding by Empire. The Kien Huat Montreign Loan Agreement contains representations and warranties and affirmative covenants that are usual and customary, including representations, warranties and covenants that, among other things, restrict Montreign Holding's use of the proceeds of the Kien Huat Montreign Loan to expenses relating to the Development Projects. Obligations under the Kien Huat Montreign Loan Agreement may be accelerated upon certain customary events of default (subject to grace periods, as appropriate), including, among others: nonpayment of principal, interest or fees; breach of the affirmative covenants and a default with respect to the payment of principal or interest under the Term Loan Facility by Montreign Operating or acceleration of the Term Loan Facility for any reason.

County of Sullivan Industrial Development Agency Benefits Relating to the Development Projects

Casino Project IDA Benefits

In March 2013, the Company received approval from the County of Sullivan Industrial Development Agency ("IDA") for the provision of certain forms of financial assistance in connection with the development of the Casino Project. These prospective benefits included, among others, (i) an exemption from New York State and local sales and use taxes with respect to certain items used in, or for the acquisition, construction and equipping of the Casino Project (the "Casino Project Tax Benefit"), which Casino Project Tax Benefit is subject to a cap, (ii) an exemption from all mortgage recording taxes imposed in New York State, and (iii) a partial (or full) real property tax abatement over 16 years ((i), (ii) and (iii), collectively, the "Casino Project IDA Benefits"). The Casino Project IDA Documents, as further amended as discussed below, became effective upon the grant of the Gaming Facility License to Montreign Operating in December 2015.

In September 2014, the IDA and the Company entered into an Agent Agreement, Lease Agreement, Leaseback Agreement, payment in lieu of tax ("PILOT") Agreement, and related documents (together and as amended, the "Casino Project IDA Documents") providing for the Casino Project IDA Benefits following formal approval of such agreements by the IDA. Among other things, pursuant to the Casino Project IDA Documents, the Company is required to pay to the IDA (i) annual rent and (ii) a fee in connection with the use of these forms of financial assistance.

In support of site preparation activities for the Casino Project, on May 26, 2015, the IDA took action to allow the Company to obtain the Casino Project Tax Benefit with respect to its eligible Casino Project expenses immediately, even though the Casino Project IDA Documents would not be effective until the Gaming Facility License was issued. In connection with this authorization, the Company paid to the IDA an administrative fee of $150,000 and was permitted to defer an escrow payment in the amount of $100,000 until a building permit for the construction of the Casino Project is issued.

On August 14, 2015, the Company applied to the IDA to increase the cap on the Casino Project Tax Benefit and the value subject to the PILOT agreement as a result of changes to the design of the Casino Project, which substantially increased the cost of development. On September 18, 2015, the IDA approved amendments to the Casino Project IDA Documents (i) increasing the Casino Project Tax Benefit cap from approximately $15 million to $35 million and (ii) increasing the total value subject to the PILOT agreement from $53.5 million to $65 million. In connection with these amendments to the Casino Project IDA Documents, the annual rent due to the IDA from the Company on the Casino Project Parcel increased to $166,000 and the fee due to the IDA was increased by $82,500.

In connection with Montreign Operating's entry into the Term Loan Agreement and the Revolving Credit Agreement, on the Loan Closing Date, Montreign Operating, ERREI, the IDA and the Credit Suisse AG, Cayman Islands Branch, as Collateral Agent, entered into a Building Loan Mortgage, Leasehold Mortgage, Assignment of Rents and Leases, Security Agreement and Fixture Filing. In connection with the execution of these agreements, the Company was exempt from the mortgage recording taxes imposed by New York State pursuant to the terms of the Casino Project IDA Documents.

Golf Course Project IDA Benefits

On June 20, 2016, ERREI obtained approval from the IDA for the provision of certain forms of financial assistance in connection with the Golf Course Project, which prospective benefits include (i) an exemption from New York State and local sales and use taxes with respect to certain items used in, or for, the acquisition, construction and equipping of the Golf Course Project, (ii) an exemption from all mortgage recording taxes imposed in New York State, and (iii) a partial (or full) real property tax abatement over 16 years ((i), (ii) and (iii), collectively, the "Golf Course Project IDA Benefits").

On December 22, 2016, the IDA and ERREI entered into an Agent Agreement, Lease Agreement, Leaseback Agreement, PILOT Agreement and related documents (the "Golf Course Project IDA Documents") providing for the Golf Course Project IDA Benefits. ERREI is required to pay annual rent to the IDA in the amount of $10,000 per year for the first two years of the Lease Agreement term and $25,000 per year thereafter. In addition, ERREI is required to make annual PILOT payments to the IDA based on a total value of $4.8 million, which payment is discounted for the first two years of the property tax abatement period to accommodate for construction of the Golf Course Project.

Casino Project Branding

Montreign Operating is in discussions with an entity affiliated with Tan Sri Lim Kok Thay, a beneficiary of Kien Huat, to use certain trademarks related to the “Resorts World” and "Genting" names in relation to the Casino Project and the other Development Projects (the "RW License Agreement"). In addition, the parties are negotiating an agreement pursuant to which the Casino Project will become a member of the "Genting Rewards" customer loyalty program. On March 7, 2017, the Board of Directors of Empire and the Board of Managers of Montreign Operating approved the form of the RW License Agreement, which will be submitted to the NYSGC for review and approval. Upon the receipt of such approval from the NYSGC, the parties will execute the RW License Agreement.

JCJ Architecture

Montreign Operating has entered into a professional services agreement with JCJ Architecture PC, which is a standard architectural agreement, with normal and customary terms, and addresses, among other things, architectural services, dates of completion of the Casino Project and MWBE participation in the Casino Project.

LP Ciminelli

Montreign Operating has entered into a construction manager agreement with LP Ciminelli, Inc., which is a standard construction manager agreement, with normal and customary terms, and addresses, among other things, the Guaranteed Maximum Price of approximately $511 million for the Casino Project (the "Guaranteed Maximum Price"), completion commitments and MWBE participation in the Casino Project.

Monticello Casino and Raceway

Monticello Casino and Raceway began racing operations in 1958 and currently features the following:

- 1,070 VLTs and 40 ETGs (collectively 1,110 VGMs);
- year-round live harness horse racing;
- year-round simulcast pari-mutuel wagering on thoroughbred and harness horse racing from around the world;
- a 3,000-seat grandstand with retractable windows and a 100-seat clubhouse;
- parking spaces for 2,000 cars and 10 buses;
- an a la carte restaurant and a two-outlet food court with seating capacity for up to 100 patrons;
- a 1,386-square foot multi-functional space used for events;
- a 1,525-square foot simulcast room located directly adjacent to the gaming floor;
- a casino bar and an additional clubhouse bar; and
- an entertainment lounge with seating for 75 patrons.

VGM Operations

We operate a 45,000-square foot VGM facility known as Monticello Casino and Raceway. The VGMs are owned by New York State and VGM activities in New York State are overseen by the NYSGC. Revenues derived from our VGM operations consist of VGM revenues and food and beverage revenues.

Gross VGM revenues consist of the total amount wagered at our VGMs, less prizes awarded. The statute provides a marketing allowance for racetracks operating video lottery programs of 10% on the first $100 million of net revenues generated and 8% thereafter. Video lottery gaming is permitted for no more than 20 consecutive hours per day and on no day can such operation be conducted past 6:00 a.m.

Raceway Operations

Raceway operations, simulcasting and pari-mutuel wagering activities in New York State are overseen by the NYSGC. We derive our racing revenue principally from the following:

- wagering at Monticello Casino and Raceway on live races run at Monticello Casino and Raceway;
- fees from wagering at out-of-state locations and internationally on races run at Monticello Casino and Raceway using export simulcasting;
- revenue allocations, as prescribed by law, from betting activity at off-track betting facilities in New York State;
- wagering at Monticello Casino and Raceway on races broadcast from out-of-state racetracks using import simulcasting; and
- program and certain other ancillary activities.

Simulcasting

Import and, particularly, export simulcasting, are important parts of our business. Simulcasting is the process by which a live horse race held at one facility (the “host track”) is transmitted to another location that allows patrons of such other location to wager on that race. Amounts wagered at each off-track betting location are combined into the appropriate pools at the host

track's tote facility where the final odds and payouts are determined. With the exception of a few holidays, we offer year-round simulcast wagering from racetracks across the country. In addition, races of national interest, such as the Kentucky Derby, Preakness Stakes and Breeders' Cup supplement our regular simulcast programming. We also export live broadcasts of our own races to race tracks, casinos and off-track betting facilities in the United States and internationally.

On November 3, 2014, MRMI and the Monticello Harness Horsemen's Association (the "MHHA") entered into an agreement that governs the conduct of MRMI and MHHA relating to horseracing purse payments, the simulcasting of horse races and certain other payments (the "2014 MHHA Agreement"). The term of the 2014 MHHA Agreement expires seven years from the date the NYSGC approves the Casino Project to engage in legalized gaming. On that same date, MHHA will also receive, subject to adjustment for corporate events, 200,000 shares of common stock and a warrant to purchase 60,000 shares of common stock, the proceeds of any sales of which will provide additional monies for the harness horsemen's purse account.

Pari-mutuel Wagering

Our racing revenue is derived from pari-mutuel wagering at our track and government mandated revenue allocations from certain New York State off-track betting locations. In pari-mutuel wagering, patrons bet against each other rather than against the operator of the facility or with pre-set odds. The amounts wagered form a pool of funds from which winnings are paid based on odds determined by the wagering activity. The racetrack acts as a stakeholder for the wagering patrons and deducts from the amounts wagered a "take-out" or gross commission from which the racetrack pays state and county taxes and racing purses. Our pari-mutuel commission rates are fixed as a percentage of the total handle or amounts wagered.

Regulation

The gaming industry is highly regulated and we must maintain our licenses and pay gaming taxes to continue our operations. The Casino Project and Monticello Casino and Raceway are subject to extensive regulation under the laws, rules, and regulations of New York State. These laws, rules, and regulations generally concern the conduct of operations as well as the responsibility, financial stability, and character of the facilities, owners, managers, and persons with financial interests in the gaming operations. Individuals and entities, including investors and vendors conducting business with us, must file license/registration applications with the NYSGC, and in some instances must submit to background investigations by the New York State Police in order to prove suitability for licensure/registration. Application, fingerprinting and investigative fees must be paid by us or by the individual or entity seeking licensure or registration. Failure to obtain and maintain a license or registration, as applicable, could require us to sever our relationship with such individuals and/or entities, which could have a material adverse effect on our operations or the Development Projects.

Our businesses are also subject to various foreign, federal, state, and local laws and regulations, in addition to gaming regulations. These laws and regulations include, but are not limited to, restrictions and conditions concerning alcoholic beverages, smoking, environmental matters, employees, currency transactions, taxation, zoning and building codes, construction, land use, and marketing and advertising. We also deal with significant amounts of cash in our operations and are subject to various reporting and federal anti-money laundering ("AML") laws, as further discussed below. Such laws and regulations could change or could be interpreted differently in the future, or new laws and regulations could be enacted. Material changes, new laws or regulations, or material differences in interpretations by courts or governmental authorities could adversely affect our operations or the Development Projects.

Casino Gaming Regulations

The Upstate New York Gaming and Economic Development Act ("Gaming Act"), provides among other things, the statutory framework for the regulation of full-scale casino gaming. The Gaming Act authorized the NYSGC to award up to four Gaming Facility Licenses. The NYSGC awarded Montreign Operating the sole Gaming Facility License in the Hudson Valley-Catskills region. It also awarded one Gaming Facility License in the Albany region and two Gaming Facility Licenses in the eastern Southern Tier/Finger Lakes region. The Gaming Act provides that no casinos shall be authorized in Bronx, Kings, New York, Queens or Richmond counties. New York State may, however, legislatively authorize additional Gaming Facility Licenses.

The Gaming Act provides for a seven-year exclusivity period for holders of Gaming Facility Licenses, commencing March 1, 2016, during which no further Gaming Facilities can be licensed by the NYSGC without legislative action. If the New York State legislature authorizes additional Gaming Facility Licenses within this exclusivity period, holders of the original four Gaming Facility Licenses shall have the right to recover a pro-rata portion of the license fee paid.

On March 1, 2016, the Minimum Capital Investment Deposit was made in the aggregate amount of $85.4 million. The Project Parties' portion of the Minimum Capital Investment Deposit was made in the form of a deposit bond representing approximately $65 million, which is 10% of the Company's share of the Minimum Capital Investment in the Development Projects and EPR's portion was made in the form of a deposit bond representing approximately $20 million, which is 10% of their Minimum Capital Investment in the infrastructure for the Destination Resort and the Waterpark. In addition, on March 30, 2016, we paid the license fee of $51 million, which is reflected on the accompanying consolidated balance sheet as an intangible asset as of December 31, 2016.

The operations of the Casino Project are subject to regulation by the NYSGC, Division of Gaming. The tax rate on slot machines at the Casino Project will be 39% and the tax rate on table games will be 10%. The tax rate on VGM operations at Monticello Casino and Raceway will remain at the existing NYSGC commission rate and is expected to include an additional commission from NYSGC, based on a rate related to the effective tax rate on all gross gaming revenue at the Gaming Facility developed by Montreign Operating. Existing payments to the racing industry for purses and breeding will be maintained. However, the Gaming Act requires the maintenance of the horsemen and breeder payments at the 2013 dollar level to be adjusted annually, pursuant to changes in the consumer price index.

The Gaming Act imposes a $500 annual fee on each slot machine and table game. In addition, the Gaming Act requires that the minimum gambling age for the Casino Project will be 21, and no smoking will be authorized.

Moreover, the Gaming Act deems the Casino Project to be a New York State agency for its capital projects for the purpose of MWBE participation and the NYSGC regulations require all contracts with Montreign Operating that are in excess of $25,000 to be reviewed by the NYSGC for the purpose of MWBE participation. Montreign Operating is expected to use good faith efforts to achieve a 30% MWBE participation rate with respect to the Casino Project.

Regulatory Permits and Approvals Relating to the Development Projects

Casino Project

The Casino Project received all approvals and permits required to begin construction in February 2015 and began construction soon thereafter. In June 2015, Montreign Operating submitted certain changes in the design of the Casino Project, which received approval in July 2015.

Entertainment Village Project and Golf Course Project

On July 22, 2015, the Planning Board granted preliminary site plan approval for the Golf Course Project. On April 13, 2016, the Planning Board approved the lot improvement/consolidation plan for the Golf Course Project, which enables the Company to submit an application for final site plan approval. The Company submitted such application for final site plan approval (the "Golf Course Final Site Plan Approval") for the Golf Course Project on May 25, 2016. On June 8, 2016, the Planning Board approved the Golf Course Final Site Plan Approval. On December 28, 2016, the Planning Board extended its approval of the Golf Course Final Site Plan Approval for a period of six months to allow the Company time to coordinate the start of construction.

On December 8, 2016, the Company submitted to the Planning Board an application for site plan approval for the Entertainment Village Hotel. On February 8, 2017, the Planning Board declared itself the lead agency under the New York State Environmental Quality Review Act and referred the site plan the the Sullivan County Department of Planning and set a public hearing date of March 1, 2017. The Planning Board held a special public hearing to consider the site plan on March 1, 2017. Continued review and final approval of the site plan application for the Entertainment Village hotel is anticipated in the coming weeks.

VGM and Racing Operations

Our VGM, harness horseracing and simulcast activities in New York State are overseen by the NYSGC, Division of Lottery and Division of Horse Racing and Pari-Mutuel Wagering, respectively. The NYSGC has the authority and
responsibility to promulgate rules and regulations that affect the operations of our business. By statute, from April 1, 2008 until March 31, 2017, 41% of gross VGM revenue is distributed to us. Unless the 2017-2018 New York State Budget, which we anticipate will be adopted before March 31, 2017, contains a provision to extend this share percentage of gross VGM revenue to March 31, 2018, effective as of April 1, 2017, only 39% of gross VGM revenue will be distributed to us. We anticipate that

the New York State Budget will be adopted by March 31, 2017. In addition, the law provides for subsidized free play allowance of 15%.

Anti-Money Laundering Laws

The operations of the Casino Project and Monticello Casino and Raceway are subject to federal AML laws. The AML laws relate to the reporting of large cash transactions and suspicious activity and include screening transactions against lists maintained by the Office of Foreign Assets Control in order to prevent the processing of transactions to or from certain countries, individuals, nationals and entities. Our AML policy was developed by applying a risk-based approach and is tailored to our business activities and customer risk profiles. The risk assessment will be updated and revised to reflect changes in our business to ensure sufficiency and effectiveness of our AML policy. Failure to comply with the AML laws could subject us to significant fines and penalties.

Market and Competition from Other Gaming and VGM Operations

The Development Projects are located in the Catskills region in New York State, which has historically been a resort area, although its popularity declined with the growth of other resort destinations. We are located approximately 90 miles northwest of New York City. Specifically, Monticello Casino and Raceway is directly adjacent to New York State Route 17 (the future Interstate 86), has highly visible signage and convenient access from Exit 104 of New York State Route 17. The Development Projects are located at the Destination Resort approximately three miles away from Monticello Casino and Raceway in the Town of Thompson. The Exit 106 interchange off of New York State Route 17 is being redesigned and reconstructed to connect directly to a newly constructed Destination Resort entry road that will deliver guests arriving from New York State Route 17 directly into the Destination Resort.

The casino entertainment business is highly competitive. The industry is comprised of a diverse group of competitors that vary considerably in size and geographic diversity, quality of facilities and amenities available, marketing and growth strategies, and financial condition. Generally, we will compete directly with certain VGM and casino facilities operating in the immediate and surrounding areas. Ultimately, the Casino Project and Monticello Casino and Raceway will also compete, in part, with each other. Upon the completion of the Casino Project and the remaining Initial Projects for the Destination Resort, we will also compete with other non-gaming resorts and vacation areas, various other entertainment businesses, and other forms of gaming. Our non-gaming offerings will also compete with other retail facilities, amusement attractions, food and beverage offerings, and entertainment venues.

Gaming Operations

We expect the Casino Project to receive patronage from guests residing within 75 miles, which represents our primary market. With the completion of the Casino Project and the further opening of the Initial Projects, we expect to also receive patronage from guests residing within a 75- to 120-mile radius, which represents our secondary market. In addition, we are developing a marketing plan to attract Asian clientele both in the bus market from New York City and the mid to high-end gaming market. From game selection to food and beverage offerings, we have allocated appropriate space, game offerings and amenities to support these efforts.

We will face competition for the Casino Project from certain VGM facilities in New York State and from casinos in northeastern Pennsylvania and New Jersey and, to a lesser extent, casinos and gaming facilities located on Native American lands in the Northeast. We will face competition for guests from our primary market from a VGM facility at Yonkers Raceway, located within the New York City metropolitan area. Yonkers Raceway has a harness horse racing facility, approximately 5,300 VGMs, food and beverage outlets and other amenities. In addition, we face competition in and from the northeastern Pennsylvania, New Jersey and Connecticut gaming markets in marketing to and attracting patrons from our secondary market, including the New York City metropolitan area. Pennsylvania casinos operate table games and slot machines, grant casino credit and have access to unlimited non-taxable free play. Pennsylvania legalized the operation of up to 61,000 slot machines at 14 locations throughout the state. As of March 3, 2017, there were 12 casinos in operation within Pennsylvania, with six located at racetracks. One such racetrack facility is Mohegan Sun at Pocono Downs, in Wilkes-Barre, Pennsylvania, located approximately 70 miles southwest of Monticello, which has approximately 2,332 slot machines and 91 table games, including 18 poker tables, and a hotel and spa. In addition, Mount Airy Casino Resort in Mount Pocono, Pennsylvania, approximately 60 miles southwest of Monticello, has approximately 1,868 slot machines and 81 table games, including nine poker tables, a hotel, spa and a golf course and Sands Casino Resort in Bethlehem, Pennsylvania, located approximately 95 miles from Monticello, has approximately 3,000 slot machines and 230 table games, including 30 poker tables, a hotel and spa.

In addition to facing potential competition from the casinos in Atlantic City, legislators in New Jersey have reviewed options to place slot machines in various locations, including the Meadowlands Racetrack located in Bergen County, New Jersey. A referendum was placed on the ballot in November 2016 to enable voters to decide whether or not to amend the New Jersey State Constitution to permit two casinos in northern New Jersey, at least 72 miles from Atlantic City. The referendum was defeated by the voters.

We also face potential competition from the current or future expansion of state-licensed gaming in New England and the northeastern United States and prospective gaming projects under consideration by Native American tribes, including federally-recognized tribes in Massachusetts and New York. With the addition of traditional table gaming in Rhode Island, Maine, Pennsylvania and Delaware in recent years, and new gaming facilities authorized or under development in Massachusetts and Pennsylvania, commercial casino gaming has expanded in the northeastern United States and is poised to expand further. In the Commonwealth of Massachusetts, the single slot-only facility in Plainville has been open since 2015, while the two commercial casinos authorized for the cities of Springfield and Everett reportedly will open in 2018 and 2019, respectively. These jurisdictional expansions, many of which are convenience gaming facilities as opposed to destination gaming facilities, may not result in a corresponding increase in gaming revenues.

Native American gaming projects being pursued by the Mashpee Wampanoag Tribe, which has entered into a tribal-state gaming compact, and the Aquinnah Wampanoag Tribe, both located in the Commonwealth of Massachusetts, and the Shinnecock Indian Nation of New York, also increase the possibility of new tribal gaming in the northeastern United States in the future. In addition, other federally-recognized Native American tribes continue to pursue new gaming projects elsewhere in the northeastern United States. Additionally, tribes seeking federal recognition, as well as presently federally-recognized Native American tribes, continue efforts to establish or expand reservation lands with an interest in commercial casino gaming on such lands.

We are unable to predict the impact additional commercial casino and tribal gaming operations in the northeastern United States will have on our operations. We are also unable to predict whether changes in federal recognition rules or efforts by federally-recognized Native American tribes or tribes seeking federal recognition will lead to the establishment of additional Native American casino gaming operations in the northeastern United States, which could cause further competition with the Casino Project and the other Development Projects.

VGM Facilities

In New York State, we face competition for guests from Orange, Dutchess and Ulster counties for our VGM operation from a VGM facility at Yonkers Raceway. To a lesser extent, Monticello Casino and Raceway faces competition from two of the Pennsylvania casinos, Mohegan Sun at Pocono Downs and Mount Airy Casino Resort. These facilities are discussed above.

Generally, Monticello Casino and Raceway does not compete directly with other harness racing tracks in New York State for live racing patrons. However, Monticello Casino and Raceway does face intense competition for off-track and other legalized wagering at numerous gaming sites within New York State and the surrounding region. The inability to compete with larger purses for the races at Monticello Casino and Raceway and the limitation on other forms of legalized wagering that Monticello Casino and Raceway may offer has been a significant limitations on our ability to compete for off-track and other legalized wagering revenues.

Other Gaming

Currently electronic gaming machines are operated in 39 states, with 15 of the 39 states with commercial casinos that also offer table games. Legislation permitting other forms of casino gaming is proposed, from time to time, in various states, including those bordering New York State. Our business could be adversely affected by such competition.

New York legislators have introduced bills related to Internet gaming and Internet poker. We are unable to determine whether and which, if any, legislation will be enacted and what effect it would have on our current operations. On August 3, 2016, New York Governor Cuomo signed legislation to legalize interactive fantasy sports. We do not believe that interactive fantasy sports will materially impact our results of operations.

Pennsylvania legislators have introduced bills related to Internet gaming and the conduct of lottery on the Internet. Such bills have been referred to committees. We are unable to determine whether and which, if any, legislation will be enacted and what impact it would have on our current operations.

New Jersey law permits Atlantic City casinos to conduct Internet gaming by accepting wagers from individuals who are physically present in New Jersey. Additionally, mobile gaming is permitted in any area located within the property boundaries of a casino hotel facility, including any recreation or swimming pool and excluding parking garages and parking areas. Further, New Jersey law permits racetrack customers to place bets on live or simulcast racing while they are on racetrack property, including the restaurants and outdoor areas, such as the paddock. New Jersey gaming regulations also authorized skill-based gaming options such as Candy Crush and Words with Friends-type games that appeal to a new generation of players.

In December 2011, the United States Department of Justice ("Department") confirmed the reversal of a long-standing precedent that applied a 1961 federal gambling law to Internet gambling. The Wire Act, 18 U.S.C § 1084, et. seq., prevents wagers from taking place over phone lines. Deputy Attorney General James Cole wrote in a letter to William J. Murray, then Deputy Director and General Counsel for New York Lottery, "The Department's Office of Legal Counsel ('OLC') has analyzed the scope of the Wire Act, 18 U.S.C § 1084, and concluded that it is limited only to sports betting." We are uncertain if the Department's position would have any effect on our operations.

In November 2011, the voters in New Jersey approved a constitutional amendment permitting the legislature to authorize wagering at casinos in Atlantic City and at current or former racetracks, on the results of professional, certain college, and amateur sport and athletic events. There is legislation that would allow the state Casino Control Commission to issue licenses to casinos and racetracks to accept bets on some professional and collegiate events. However, in August 2016, the U.S. Third Circuit Court of Appeals upheld the prohibition of sports gambling in New Jersey, ruling that under federal law New Jersey may not permit racetracks and casinos to accept such sports wagers. We are uncertain if legalized sports wagering in New Jersey, if permitted in the future, would have an impact on our current or future operations.

Website Access

Our website address is www.empireresorts.com. Our filings with the Securities and Exchange Commission are available at no cost on our website as soon as practicable after the filing of such reports with the Securities and Exchange Commission.

Item 1A. Risk Factors.

In addition to the other information contained in this report on Form 10-K, the following Risk Factors should be considered carefully in evaluating our business. If any of the following risks actually occur, our business, financial condition and results of operations could be materially and adversely affected.

Risks Relating to our Overall Business

Although a substantial portion of the funds needed for the development of the Casino Project are in place, the completion of the Development Projects will require additional equity capital and debt financing. If the Company is unable to raise the additional financing needed to complete these projects, the Company's business will be materially adversely affected.

Although the proceeds of the January 2016 Rights Offering, the Term Loan Agreement and the Kien Huat Montreign Loan Facility provide a substantial portion of the funds needed for the development of the Casino Project, the completion of the Development Projects will require additional capital, including furniture, fixture and equipment financing of up to $40 million and a deposit of $35 million into the lender-controlled account holding the net proceeds of the Term Loan Facility and the Kien Huat Montreign Loan, which amount will be used towards the Entertainment Village Project. Of this payment, $15 million is required to be deposited by June 30, 2017 and the remaining $20 million is required to be deposited by December 31, 2017. The $35 million must be funded in the form of a further equity contribution to Montreign Operating. The Company expects to raise additional equity capital by the dates on which the deposits must be made. The designs of the Golf Course Project and the Entertainment Village Project are not yet finalized and our cost estimates for those projects may change. In addition, cost overruns, delays in the construction schedule or changes in design are among the factors that may increase the projected costs of the Development Projects, which may also require us to raise additional capital. If we are unable to obtain the necessary financing on terms and conditions acceptable to the Company, we may need to curtail or cease the construction of the Development Projects and our business, financial condition and prospects will be materially adversely affected.

As a holding company, we are dependent on the operations of our subsidiary, MRMI, to pay dividends or make distributions in order to generate internal cash flow. Moreover, until the Casino Project is open to the public, none of our subsidiaries involved in the Development Projects will be generating revenue, which will adversely impact our cash flow.

We are a holding company with no revenue generating operations. Montreign Operating and its subsidiaries are responsible to develop the Development Projects, which will generate no revenues or cash flow until those projects are open to the public. The Casino Project, which we expect will be the first Development Project open to the public, is scheduled to open the gaming floor and a portion of the hotel rooms in March 2018. MRMI, which operates the Monticello Casino and Raceway, is our sole subsidiary that generates revenues. Consequently, our ability to meet our working capital requirements for fiscal 2017 depends on the earnings and the distribution of funds from our sole operating subsidiary, MRMI. In fiscal 2016, MRMI had operating income of approximately $3.0 million in the current year. While the cash flow generated from our current operations, along with the proceeds of the Term Loan Facility, the Kien Huat Montreign Loan Agreement and the remaining proceeds of the January 2016 Rights Offering, are sufficient to fund our current obligations and the currently expected costs of the Development Projects and service our debt obligations, it is unlikely that MRMI will generate sufficient revenue to make cash distributions in an amount necessary for us to satisfy our working capital requirements or our obligations under any current or future indebtedness. In addition, MRMI or any other subsidiary may enter into contracts that limit or prohibit its ability to make distributions. The Kien Huat Montreign Loan Agreement limits Montreign Holding's ability to declare dividends or make distributions to Empire in an amount greater than $9 million, which amount can be used for working capital requirements and for purposes of paying taxes. Such limitations may adversely impact our ability to meet our ongoing obligations. Specifically, these limitations on making of distributions may adversely impact the Company's ability to pay our employees, accounting professionals or legal professionals, all of whom we rely on to manage our operations, ensure regulatory compliance and sustain our public company status.

If revenues and operating income from our operations at Monticello Casino and Raceway do not increase, it could adversely affect our financial performance.

There can be no assurance that our current operations will draw sufficient patrons to Monticello Casino and Raceway to increase our revenues to the point that we will recognize net income. The operations and placement of our VGMs, including the layout and distribution, are under the jurisdiction of the NYSGC and the program contemplates that a significant share of the responsibility for marketing the program will be borne by the NYSGC. The NYSGC is not required to make decisions that we feel are in our best interest and, as a consequence, the profitability of our VGM operations may not reach the levels that we believe to be feasible or may be slower than expected in reaching those levels. By statute, from April 1, 2008 until March 31, 2017, 41% of gross VGM revenue is distributed to us. Unless the 2017-2018 New York State Budget, which we anticipate will be adopted before March 31, 2017, contains a provision to extend this share percentage of gross VGM revenue to March 31, 2018, effective as of April 1, 2017, only 39% of gross VGM revenue will be distributed to us. No assurance can be given that such revenue will be sufficient to generate a profit or continue to do so. Our operations are subject to many regulatory, competitive, economic and business risks beyond our control, and a change in this regard could have a material adverse impact on our operations and our business prospects.

Gaming is a highly regulated industry and adverse changes or developments in gaming laws or regulations could be difficult to comply with or significantly increase our costs, which could cause our Development Projects to be unsuccessful.

Gaming is a highly regulated industry. Current laws, such as licensing requirements, tax rates and other regulatory obligations, including for anti-money laundering, could change or become more stringent resulting in additional regulations being imposed upon the development and operation of the Casino Project or a further liberalization of competition being introduced in the gaming industry. Any such adverse developments in the regulation of the gaming industry in New York State could be difficult to comply with and significantly increase our costs, which could cause the Development Projects to be unsuccessful.

Changes in the laws, regulations, and ordinances (including local laws) to which the gaming industry is subject, and the application or interpretation of existing laws and regulations, or our inability or the inability of our subsidiaries, key personnel, significant stockholders, or joint venture partners to obtain or maintain required gaming regulatory licenses, permits or approvals could prevent us from pursuing future development projects or otherwise adversely impact our results of operation.

The ownership, management and operation of our current and any future gaming facilities are and will be subject to extensive federal, state, provincial, and/or local laws, regulations and ordinances that are administered by the relevant regulatory agency or agencies in each jurisdiction. These laws, regulations and ordinances vary from jurisdiction to jurisdiction, but generally concern the responsibilities, financial stability and character of the owners and managers of gaming operations as well as persons financially interested or involved in gaming operations, and often require such parties to obtain certain licenses, permits and approvals. In addition, some of the licenses that we and our subsidiaries, officers, directors and principal stockholders hold expire after a relatively short period and thus require frequent renewals and reevaluations. Obtaining these

licenses in the first place and the renewal process involves a subjective determination by the regulatory agencies. If we or our subsidiaries do not obtain and maintain the required licenses, permits and approvals, we may be required to divest our interest in our current or future gaming facilities or our current gaming facility risks losing its licenses. These laws, regulations and ordinances may also affect the operations of our gaming facilities or our plans in pursuing future projects.

Commercial casino gaming was legalized in New York State in 2013 and regulations implementing the Gaming Act are not fully adopted, which makes it difficult for the Company to assess the impact of these regulations on the Casino Project and other Development Projects.

The regulations implementing the Gaming Act are still in development stage and, accordingly, the Company cannot fully assess the rules that will govern the operation and maintenance of the Casino Project and the other Development Projects. Our inability to consider all relevant regulations in the pre-opening stage of our development may lead to unexpected results and adversely affect our results of operations.

The gaming industry in the northeastern United States is highly competitive, with many of our competitors better known and better financed than us.

We primarily compete directly with other casino and VGM facilities operating in the immediate and surrounding market areas. With the completion of the Casino Project and the further opening of the Initial Projects, we expect to also receive patronage from guests residing within a 75- to 120-mile radius, including the New York City metropolitan area, which represents our secondary market. The gaming industry in the northeastern United States is highly competitive and increasingly dominated by multinational corporations or Native American tribes that enjoy widespread name recognition, established brand loyalty, decades of casino operation experience, an array of amenities, high-quality management talent and a diverse portfolio of gaming assets and with substantially greater financial resources.

Monticello Casino and Raceway faces competition from Yonkers Raceway which is located within the New York City metropolitan area. The Yonkers facility, which is much closer to New York City, has a harness horseracing facility, approximately 5,300 VGMs, food and beverage outlets and other amenities. In contrast, we have more limited financial resources and currently operate our harness horse racing facility and VGMs in Monticello, New York, which is approximately a 90-minute drive from New York City.

Pennsylvania casinos may operate table games and slot machines, have the ability to grant credit to guests of the casino and have the ability to award an unlimited amount of non-taxable free play to their guests, which poses a competitive threat to both the Casino Project and the Monticello Casino and Raceway. Pennsylvania legalized the operation of up to 61,000 slot machines at 14 locations throughout the state. As of March 10, 2017, there were 12 casinos in operation within Pennsylvania, with six located at race tracks. One such racetrack facility is the Mohegan Sun at Pocono Downs, which has approximately 2,330 slot machines and 75 table games, including 18 poker tables, and a hotel and spa. The Mohegan Sun at Pocono Downs in Wilkes-Barre, Pennsylvania, is approximately 70 miles southwest of Monticello and the Town of Thompson. In addition, the Mount Airy Casino Resort has approximately 1,868 slot machines and 81 table games, including nine poker tables, a hotel, spa, and a golf course. The Mount Airy Casino Resort is located in Mount Pocono, Pennsylvania, approximately 60 miles southwest of Monticello. The Pennsylvania Gaming Control Commission selected Stadium Casino, LLC to be awarded the 13th license for a casino to be located in Philadelphia, Pennsylvania. Any expansion of these casinos in Pennsylvania will likely increase the degree of competition within our market and may have an adverse effect on our business and future operating performance.

No assurance can be given that we will be able to compete successfully for gaming customers with established casinos or the competing VGM facility at Yonkers Raceway.

If our competitors operate more successfully than we do, if they attract customers away from us as a result of aggressive pricing and promotion, if they are more successful than us in attracting and retaining employees, if their properties are enhanced or expanded, if they operate in jurisdictions that give them operating advantages due to differences or changes in gaming regulations or taxes, or if additional hotels and casinos are established in and around the locations in which we conduct
business, we may lose market share or the ability to attract or retain employees. In particular, the expansion of casino gaming in
or near any geographic area from which we attract or expect to attract a significant number of our customers could have a
significant adverse effect on our business, financial condition and results of operations.

We depend on our skilled employees and key personnel and the loss of their services would adversely affect our operations and business strategy.

The operation of our business requires qualified executives, managers and skilled employees with hospitality, gaming and horse racing industry experience and qualifications to enable such individuals to obtain and maintain the requisite licenses and approvals from the NYSGC. In addition, with respect to our involvement in the Development Projects, we place substantial reliance on the gaming, project development and hospitality industry experience and knowledge of the northeastern United States gaming market possessed by members of our senior management team. If we are unable to maintain our key personnel and attract new skilled employees with high levels of expertise in the gaming areas in which we engage and propose to engage, or are unable to do so without unreasonably increasing our labor costs, the execution of our business strategy may be hindered and our growth limited. We believe that our success is largely dependent on the continued employment of our executive management and the hiring of strategic personnel at reasonable costs. Competition for skilled employees and qualified executives is intense and we can give no assurance that we would be able to hire a qualified replacement with the required level of experience and expertise for any current members of our senior management, if required to do so. Accordingly, if any of our current key executives were unable or unwilling to continue in his or her present position, or we were unable to attract a sufficient number of qualified employees at reasonable rates, our business, results of operations and financial condition would be materially adversely impacted. Additionally, recruiting and hiring a replacement for any skilled employees or executive management position could divert the attention of other senior management and increase our operating expenses.

Casinos are subject to Anti-Money Laundering Laws.

We deal with significant amounts of cash in the operations and will be subject to various reporting and anti-money laundering regulations. Any violation of AML laws or regulations, on which in recent years, governmental authorities have been increasingly focused, with a particular focus on the gaming industry, by any of our properties could have a material adverse effect on our financial condition and results of operation.

A downgrade in our credit ratings could materially adversely affect our business and financial condition.

In connection with the Term Loan Facility and the Revolving Credit Facility, Montreign Operating was required to obtain credit ratings for its debt offering. Although the maintenance of a certain credit rating is not a condition to the availability of the Term Loan Facility or the Revolving Credit Facility, an adverse change in this credit rating and the credit ratings assigned to our debt securities could adversely affect our business. Such ratings are subject to ongoing evaluation by credit rating agencies, and any rating could be changed or withdrawn by a rating agency in the future if, in its judgment, circumstances warrant such action. For example, such ratings could change based upon, among other things, our results of operations and financial condition.

If any of the credit rating agencies that have rated our securities downgrades or lowers its credit rating, or if any credit rating agency indicates that it has placed any such rating on a "watch list" for a possible downgrade or lowering, or otherwise indicates that its outlook for that rating is negative, such action could have a material adverse effect on our costs and availability of funding in the future, which could in turn have a material adverse effect on our financial condition, results of operations, cash flows, the trading price of our securities and our ability to satisfy our debt service obligations, among other obligations.

Risks Relating to the Development Projects

The Development Projects are capital intensive and, in order to obtain the necessary financing, we have entered into the Term Loan Agreement and the Kien Huat Montreign Loan Agreement, which contain restrictions that limit our flexibility in operating our business.

The Development Projects require substantial capital. On January 24, 2017, Montreign Operating entered into the Term Loan Agreement and Montreign Holding entered into the Kien Huat Montreign Loan Agreement, both of which agreements contain restrictions that limit our flexibility in operating our business. The Term Loan Agreement and the Kien Huat Montreign Loan Agreement contain a number of covenants that impose significant operating and financial restrictions on us, including restrictions on our subsidiaries' ability to, among other things:

· incur additional debt or issue certain shares;

· pay dividends on or make distributions in respect of our common stock or make other restricted payments;

· make certain investments or acquisitions;

· incur or permit liens on certain assets; and

· consolidate, merge, sell or otherwise dispose of all or substantially all of our assets.

Moreover, to make use of the proceeds of the Term Loan Agreement, Montreign Operating must satisfy the disbursement conditions set forth thereunder, including confirmations that the proceeds will be applied towards the expenses itemized in the Development Projects construction budget submitted to the lenders. If we cannot satisfy the disbursement conditions, Montreign Operating will be unable to utilize the Term Loan Facility, which may require us to curtail or end construction of the Development Projects altogether. As a result of these covenants, we are limited in the manner in which we conduct our business, and we may be unable to engage in favorable business activities or finance future operations or capital needs, which may adversely impact our operations.

Defaults under the Term Loan Agreement, the Revolving Credit Agreement or the Kien Huat Montreign Loan Agreement could result in a substantial loss of our assets.

We have pledged a significant portion of our assets as collateral under the Term Loan Agreement, Revolving Credit Agreement and the Kien Huat Montreign Loan Agreement. A failure to comply with the covenants contained in any of these agreements could result in an event of default thereunder, which, if not cured or waived, could enable the lenders thereunder to declare all borrowings outstanding, together with accrued and unpaid interest and fees, to be due and payable and terminate all commitments to extend further credit. The lenders could also elect to foreclose on our assets securing such debt. Such actions by the lenders could cause cross defaults under our other indebtedness. In such an event, the Company may not be able to refinance or repay all of its indebtedness, pay dividends or have sufficient liquidity to meet operating and capital expenditure requirements. Any such acceleration could cause us to lose a substantial portion of our assets and will substantially adversely affect our ability to continue our operations.

Our level of indebtedness could adversely affect our ability to raise additional capital to fund our operations, limit our ability to react to changes in the economy or our industry and prevent us from meeting our obligations.

As of the Loan Closing Date, the amount of our total long-term debt was approximately $447 million (with the ability to draw down on the $70 million Term A Loan subject to the conditions of the Term Loan Agreement, which must be met at the time a request to draw on the Term A Loan is made). Our outstanding debt and related debt service obligations could have important adverse consequences to us, including:

- limiting our ability to borrow further capital needed to complete the Development Projects, if needed;
- heightening our vulnerability to downturns in our business, industry, or the general economy and restricting us from making improvements or acquisitions, or exploring business opportunities;
- requiring a significant portion of our available cash to be dedicated to the payment of principal and interest on our indebtedness, thereby reducing our use of available cash to fund our operations, capital expenditures and future business opportunities;
- limiting our ability to adjust to changing market conditions and placing us at a competitive disadvantage compared to our competitors who have greater capital resources.

The ability to make payments of principal and interest on indebtedness will depend on the future performance of the Development Projects, which is subject to general economic conditions, industry cycles and financial, business and other factors affecting our operations, many of which are beyond our control. If sufficient cash flow is not generated from operations to service such debt, we may be required, among other things, to:

- seek additional financing in the debt or equity markets;
- delay, curtail or abandon altogether our development plans;
- refinance or restructure all or a portion of our indebtedness; or
- sell selected assets.

Such measures might be insufficient to service the indebtedness. In addition, any such financing, refinancing or sale of assets may not be available on commercially reasonable terms, or at all. If funds are not available when needed, or available on acceptable terms, we may be required to delay, scale back or eliminate some of our obligations with respect to the Development Projects. In addition, we may not be able to grow market share, take advantage of future opportunities or respond to competitive pressures or unanticipated requirements, which could negatively impact our business, operating results and financial condition.

Construction at the Development Projects is subject to hazards that may cause personal injury or loss of life, thereby subjecting us to liabilities and possible losses, which may not be covered by insurance.

The construction of large-scale properties such as the Development Projects can be dangerous. Construction workers at our projects are subject to hazards that may cause personal injury or loss of life, thereby subjecting the contractor and us to liabilities, possible losses, delays in completion of the projects and negative publicity. In the event of such accidents, we may stop construction for several days to allow for safety inspections and investigations. We and our contractors will take safety precautions that are consistent with industry practice, but these safety precautions may not be adequate to prevent serious personal injuries or further loss of life, damage to property or delays. If accidents occur during the construction of Development Projects, we may be subject to delays, including delays imposed by regulators, liabilities and possible losses, which may not be covered by insurance, and our business, prospects and reputation may be materially and adversely affected.

The costs associated with the Development Projects may increase due to significant risks inherent in construction projects.

The construction of the Development Projects subjects us to significant risks inherent in the construction of a new facility, including unanticipated design, construction, regulatory and environmental problems. The Development Projects could also experience:

- changes to plans and specifications (some of which may require the approval of the NYSGC);
- delays and significant cost increases;
- shortages of materials;
- shortages of skilled labor or work stoppages for contractors and subcontractors;
- inability of contractors and subcontractors to obtain and maintain required licenses issued by the NYSGC;
- inability to meet MWBE participation goals;
- labor disputes or work stoppages;
- disputes with and defaults by contractors and subcontractors;
- health and safety incidents and site accidents;
- engineering problems, including defective plans and specifications;
- poor performance or nonperformance by any third parties on whom we place reliance;
- changes in laws and regulations, or in the interpretation and enforcement of laws and regulations, applicable to gaming;
- unforeseen construction scheduling, engineering, environmental, permitting, construction or geological problems;
- environmental issues, including the discovery of unknown environmental contamination;
- weather interference, floods, fires or other casualty losses;
- other unanticipated circumstances or cost increases; and

- failure to obtain necessary licenses, permits, entitlements or other governmental approvals with respect to the Entertainment Village Project and Golf Course Project.

The occurrence of any of these development and construction risks could increase the total costs of the Development Projects or delay or prevent the construction or opening or otherwise affect the design and features of the Development Projects, all of which could materially adversely affect our financial condition and cause us to require additional external financing.

In combination with existing and proposed casinos in New York State and nearby states, the Casino Project will face intense competition that may adversely impact our ability to meet our development goals.

A number of Native American tribes and gaming entrepreneurs are seeking to develop casinos in New York State and Connecticut in areas that are approximately 90 miles from New York City, such as Bridgeport, Connecticut and Southampton, New York. We are unable to predict when or if laws would be amended to permit such tribes and entrepreneurs to develop casinos in New York State and nearby states. Depending on the size, location and scope and gaming tax rate, if casinos are built in northern New Jersey, they may adversely impact our current operations and the prospects for the Casino Project. Based on proximity, a gaming facility in any of the nearby states, which could include a casino, hotel, restaurants and retail shops, may significantly increase the competition we face and have a material adverse effect on our business operations and future performance.

None of the Development Projects have operating history and our projections on the operations of such properties may not serve as an adequate basis to judge our future operating results and prospects.

There is no historical information available about the Casino Project, the Entertainment Village Project or the Golf Course Project upon which you can base your evaluation of their respective business plans and prospects. The Development Projects will generate no revenue until the Casino Project is open to the public (which will be the first of the Development Projects open to the public), which is expected to occur in March 2018. As a result, you should consider our business and prospects in light of the risks, expenses and challenges that we will face as a company seeking to develop and operate a major new development project and gaming businesses in a rapidly growing and intensely competitive market.

We have encountered and will continue to encounter risks and difficulties frequently experienced by companies developing a major new project, and those risks and difficulties may be heightened in a rapidly developing market such as the gaming market in the northeastern United States. Some of the risks relate to our ability to:

- complete our construction projects within their anticipated time schedules and budgets;
- attract and retain customers and qualified employees;
- operate, support, expand and develop our operations and our facilities;
- maintain effective control of our operating costs and expenses;
- develop and maintain internal personnel, systems and procedures to assure compliance with the extensive regulatory requirements applicable to the gaming business;
- respond to changes in our regulatory environment; and
- respond to competitive market conditions.

If we are unable to complete any of these tasks, we may be unable to complete and operate the Development Projects in the manner we contemplate and generate revenues in the amounts and by the times we anticipate. We may also be unable to meet the conditions to draw on the Term A Loan in order to fund our development and construction activities. If any of these events were to occur, it would have a material adverse effect on our business and prospects, financial condition, results of operations and cash flows.

Even if the Casino Project, the Entertainment Village Project and the Golf Course Project are completed as planned and opened, they may not be financially successful, which would limit our cash flow and would materially adversely affect our operations and our ability to repay our debt.

Even if the Casino Project, the Entertainment Village Project and the Golf Course Project are completed as planned and opened, one or more still may not be a financially successful venture or generate the cash flows that we anticipate. We may not attract the level of patronage that we are seeking. If the Casino Project, the Entertainment Village Project or the Golf Course

Project do not attract sufficient business, this will limit our cash flow and would materially adversely affect our operations and our ability to service payments under our debt agreements.

New York State could grant additional Gaming Facility Licenses in our area or in New York City or the surrounding counties earlier than the expected seven-year blackout period, which could significantly increase the already intense competition in the northeastern United States and cause us to lose or be unable to gain market share.

The Gaming Act provides for the award of up to four Gaming Facility Licenses in three regions of upstate New York, including our area, and prohibits the issuance of Gaming Facility Licenses in the "downstate" region, which includes New York City and its surrounding counties. The award of such a Gaming Facility License is intended to be exclusive for a period of seven years commencing on the date of the award. We can provide no assurance that the New York State government will not change this law and issue additional Gaming Facility Licenses before the expiration of this seven-year exclusivity period. If the New York State government were to allow additional competitors to operate in our area or in other regions of New York through the grant of additional Gaming Facility Licenses, we would face additional competition, which could significantly increase the already intense competition in the northeastern United States and cause us to lose or be unable to gain market share.

Our business depends on a strong brand and if we are not able to build, maintain and enhance our brand, our ability to expand our market will be impaired and our business and operating results will be harmed.

We believe that the brand identity that we intend to develop will significantly contribute to the success of our business. We also believe that maintaining and enhancing a brand is critical to expanding our market share. The Board of Directors of Empire and the Board of Managers of Montreign Operating have approved the form of the RW License Agreement, which has been submitted to the NYSGC for review and approval. Building, maintaining and enhancing our brand may require us to make substantial investments and these investments may not be successful. If we fail to promote and maintain our brand, or if we incur excessive expenses in this effort, our business, operating results and financial condition will be materially adversely affected. We anticipate that, as our market becomes increasingly competitive, maintaining and enhancing our brand may become increasingly difficult and expensive.

Risks Relating to our Ownership Structure

Stockholders' ability to influence corporate decisions may be limited because our major stockholder owns a large percentage of our common stock.

Kien Huat is the beneficial holder of 27,533,067 shares of our common stock, representing approximately 88.3% of our voting power as of March 10, 2017. This reflects Kien Huat's participation and backstop of the January 2016 Rights Offering (as defined below) pursuant to the January 2016 Standby Purchase Agreement (as defined below) and the conversion of the convertible promissory note held by Kien Huat pursuant to the terms of a loan agreement dated November 10, 2010, by and between the Company and Kien Huat (the "2010 Kien Huat Loan Agreement"). Under the terms of an investment agreement dated November 12, 2009 (the "Investment Agreement"), between the Company and Kien Huat, if any option or warrant outstanding as of the final closing under the Investment Agreement, or the first 200,000 shares granted to directors or officers who served in such capacity as of the final closing date under the Investment Agreement, are exercised, Kien Huat has the right (following notice of such exercise) to purchase an equal number of additional shares of our common stock as are issued upon such exercise at the exercise price for the applicable option or warrant (such rights the "Option Matching Rights"). As of December 31, 2016, Kien Huat had approximately 21,000 Option Matching Rights.

Under the terms of the Investment Agreement, Kien Huat is also entitled to recommend three directors candidates whom we are required to cause to be elected or appointed to our Board of Directors ("Board"), subject to the satisfaction of all legal and governance requirements regarding service as a director and to the reasonable approval of the Corporate Governance and Nominations Committee of our Board. Kien Huat will continue to be entitled to recommend three directors candidates for so long as it owns at least 24% of our voting power outstanding at such time, after which the number of directors whom Kien Huat will be entitled to designate for election to our Board will be reduced proportionally to Kien Huat's percentage of ownership. Under the Investment Agreement, for so long as Kien Huat is entitled to recommend nominees to serve as Board members, among other things, Kien Huat will have the right to nominate one of its director designees to serve as the Chairman of the Board. Emanuel Pearlman has been appointed to serve as Chairman of the Board pursuant to Kien Huat's recommendation. Until such time as Kien Huat ceases to own capital stock with at least 30% of our voting power outstanding at such time, our Board will be prohibited under the terms of the Investment Agreement from taking certain actions relating to fundamental transactions involving us and our subsidiaries and certain other matters without the affirmative vote of the directors recommended by Kien Huat and elected by shareholders. Consequently, Kien Huat has the ability to exert significant influence

over our policies and affairs, including the election of our Board and the approval of any action requiring a stockholder vote, such as approving amendments to our certificate of incorporation and mergers or sales of substantially all of our assets, as well as other matters. Although Kien Huat has expressed no interest in doing so, Kien Huat is not restricted from acquiring additional shares of our common stock, including through open market purchases. However, on February 17, 2016, we entered into a letter agreement with Kien Huat (the "Kien Huat Letter Agreement"), wherein Kien Huat agreed, for a period of three years from the date of the Kien Huat Letter Agreement, to seek certain approvals of the Board of Directors and minority shareholders in connection with any "going-private" transaction. Notwithstanding the Kien Huat Letter Agreement, this concentration of voting power could delay or prevent an acquisition of our Company on terms that other stockholders may desire or force the sale of our company on terms undesirable to other stockholders.

Risks Relating to the Market Value of Our Common Stock

The Racing, Pari-Mutuel Wagering and Breeding Law of New York State requires our stockholders to possess certain qualifications. If the NYSGC believes a stockholder does not meet their subjective determination, a stockholder may be forced to sell any stock they hold and such sale may result in a material loss of investment value for the stockholder.

The Racing, Pari-Mutuel Wagering and Breeding Law of New York State requires our stockholders to possess certain qualifications. A failure to possess such qualifications could lead to a material loss of investment by either us or our stockholders, as it would require divestiture of the stockholder's direct or indirect interest in us. Consequently, should any stockholder ever fail to meet the qualifications necessary to own a direct or indirect interest in us as determined by NYSGC, such stockholder could be forced to liquidate all interests in us. Should such stockholder be forced to liquidate these interests within a relatively short period of time, such stockholder would likely be forced to sell at a discount, causing a material loss of investment value.

The market price of our common stock is volatile, leading to the possibility of its value being depressed at a time when our stockholders want to sell their holdings.

The market price of our common stock has in the past been, and may in the future continue to be, volatile. For instance, between January 1, 2016 and March 10, 2017, the closing price of our common stock has ranged between $11.38 and $25.19 per share. A variety of events may cause the market price of our common stock to fluctuate significantly, including, but not necessarily limited to the following:

- quarter-to-quarter variations in operating results;
- day traders;
- adverse or positive news reports or public announcements; and
- market conditions for the gaming industry.

In addition, the stock market in recent years has experienced significant price and volume fluctuations. This volatility has had a substantial effect on the market prices of companies, at times for reasons unrelated to their operating performance. These market fluctuations may adversely affect the price of our common stock and other interests in the Company at a time when our stockholders want to sell their interest in us.

If we fail to meet the applicable continued listing requirements of NASDAQ Global Market, NASDAQ may delist our common stock, in which case the liquidity and market price of our common stock could decline.

Our common stock is currently listed on the NASDAQ Global Market. In order to maintain that listing, we must satisfy certain continued listing requirements. If we are deficient in maintaining the necessary listing requirements, our common stock may be delisted. If our common stock is delisted, an active trading market for our common stock may not be sustained and the market price of our common stock could decline.

We do not anticipate declaring any dividends in the foreseeable future.

During the past three fiscal years, we did not declare or pay any cash dividends with respect to our common stock and we do not anticipate declaring any cash dividends on our common stock in the foreseeable future. We intend to retain all future earnings for use in the development of our business. There can be no assurance that we will have, at any time, sufficient surplus under Delaware law to be able to pay any dividends.

Future sales of our common stock by our insiders may cause our stock price to decline.

A portion of our outstanding shares are held by directors and executive officers and a significant portion of our outstanding shares are held by Kien Huat, our largest stockholder. Resales of a substantial number of shares of our stock by these stockholders, announcements of the proposed resale of substantial amounts of our stock, or the perception that substantial resales may be made by such stockholders could adversely impact the market price of our stock. Some of our directors and executive officers have entered into Rule 10b5-1 trading plans pursuant to which they have arranged to sell shares of our common stock from time to time in the future. Actual or potential sales by these insiders, including those under a pre-arranged Rule 10b5-1 trading plan may adversely impact the market price of our stock.

Future sales of shares of our common stock in the public market could adversely affect the trading price of shares of our common stock and our ability to raise funds in new stock offerings.

Future sales of substantial amounts of shares of our common stock in the public market, including pursuant to the Second Amendment to the Commitment Letter or the effective shelf registration statement, or the perception that such sales are likely to occur could affect the market price of our common stock. Kien Huat's stock ownership may also discourage a potential acquirer from making a tender offer or otherwise attempting to obtain control of us, which in turn could reduce our stock price or prevent our stockholders from realizing a premium over our stock price.

Risks Relating to our Racing Operations

The continuing decline in the popularity of horse racing, decline of the horse population and increasing competition in simulcasting could adversely impact the business of Monticello Casino and Raceway.

Since the mid-1980s, there has been a general decline in the number of people attending and wagering at live horse races at North American racetracks due to a number of factors, including increased competition from other forms of gaming, unwillingness of guests to travel a significant distance to racetracks and the increasing availability of off-track wagering. The declining attendance at live horse racing events has prompted racetracks to rely increasingly on revenues from inter-track, off-track and account wagering markets. The industry-wide focus on inter-track, off-track and account wagering markets has increased competition among racetracks for outlets to simulcast their live races. In 2016, 2015 and 2014, we generated approximately $2.9 million, $3.3 million and $1.8 million, respectively, of revenues from the import and export simulcasting of out-of-state racing, of which approximately $1.4 million, $1.7 million and $900,000, respectively, were due to the horsemen. A continued decrease in attendance at live events and in on-track wagering, continued decline in the horse population and available drivers, as well as increased competition in the inter-track, off-track and account wagering markets, could lead to a decrease in the amount wagered at Monticello Casino and Raceway. Our business plan anticipates the possibility of Monticello Casino and Raceway attracting new guests to our racetrack wagering operations through VGMs in order to offset the general decline in raceway attendance. However, even if our VGM operations attract new guests to our racetrack, we may not be able to generate profit from operations. Public tastes are unpredictable and subject to change. Any further decline in interest in horse racing or any change in public tastes may adversely affect our revenues and, therefore, limit our ability to make a positive contribution to our results of operation.

General Business Risks

Instability and volatility in the financial markets could have a negative impact on our business, financial condition, results of operations and cash flows.

The demand for entertainment and leisure activities tends to be highly sensitive to consumers' disposable income. Discretionary consumer spending habits have been adversely affected by the recent economic conditions and the actual or perceived economic conditions could lead to further decrease in spending by our guests. We cannot predict at what level these negative trends will continue, worsen or improve and the ultimate impact it will have on our future results of operations. The continued weakness in our market and the deterioration of the broader global economy would have a material adverse effect on our industry and our business, including our revenues, profitability, operating results and cash flow.

Moreover, we may need to raise additional capital or incur additional indebtedness to finance our plans for growth. We may be unable to incur additional indebtedness in the public or private markets to fund our business strategy on terms we believe to be reasonable, if at all. In addition, the Term Loan Agreement and Revolving Credit Agreement may limit our ability to incur debt at all. Moreover, we may be unable to raise capital on terms acceptable to the Company. An inability to obtain the capital we need to finance our growth plans may adverse affect our operations and business prospects.

We are subject to greater risks than a geographically diverse company.

Our operations are limited to the Catskills region of New York State, which has been affected by decades-long decline in economic conditions. As a result, in addition to our susceptibility to adverse global and domestic economic, political and business conditions, any economic downturn in the region could have a material adverse effect on our operations. An economic downturn would likely cause a decline in the disposable income of consumers in the region, which could result in a decrease in the number of patrons at our facility, the frequency of their visits and the average amount that they would be willing to spend at our facility. We are subject to greater risks than more geographically diversified gaming or resort operations, including:

- a downturn in national, regional or local economic conditions;
- an increase in competition in New York State or the northeastern United States and Canada, particularly for day-trip patrons residing in New York State, including as a result of any new tribal Class III casinos, destination gaming resorts or VGMs at certain racetracks and other locations in New York State, Connecticut and New Jersey and casinos in Pennsylvania;
- impeded access due to road construction or closures of primary access routes; and
- adverse weather and natural and other disasters in the northeastern United States.

The occurrence of any one of the events described above could cause a material disruption in our business and make us unable to generate sufficient cash flow to make payments on our obligations.

Our business is particularly sensitive to energy prices and a rise in energy prices could harm our operating results.

We are a large consumer of electricity and other energy and, therefore, higher energy prices may have an adverse effect on our results of operations. Accordingly, increases in energy costs may have a negative impact on our operating results. Additionally, higher electricity and gasoline prices which affect our customers may result in reduced visitation to Monticello Casino and Raceway and a reduction in our revenues.

Our business operations have historically been subject to seasonal variations and quarterly fluctuations in operating results, and we can expect to experience such variations and fluctuations in the future.

Our results of operations may be adversely affected by weather-related and seasonal factors. Severe winter weather conditions may deter or prevent patrons from reaching our gaming facilities or undertaking day trips. Although our budget assumes these seasonal fluctuations in our gaming revenues to ensure adequate cash flow during expected periods of lower revenues, we cannot ensure that weather-related and seasonal factors will not have a material adverse effect on our operations.

Our operations are located at a facility in Monticello, New York and the Development Projects are being developed in the Town of Thompson, New York. Although this area is not prone to earthquakes, floods, tornadoes, fires or other natural disasters, the occurrence of any of these events or any other cause of material disruption in our operation could have a material adverse effect on our business, financial condition and operating results. Moreover, although we do maintain insurance customary for our industry, including a policy with $10 million limit of coverage for the perils of flood and earthquake, we cannot ensure that this coverage will be sufficient in the event of one of the disasters mentioned above.

We may be subject to material environmental liability as a result of unknown environmental hazards.

We are subject to various federal, New York State and local environmental laws and regulations that govern our operations and the construction of the Development Projects, including emissions and discharges into the environment, and the storage, handling and disposal of hazardous and non-hazardous substances and wastes. Failure to comply with such laws and regulations could result in regulatory fines, legal fees and costs for remediation. Such fines and costs could be related to our storage, handling and disposal of waste from our racing operations, the existence of asbestos at Monticello Casino and Raceway and the existence of environmental conditions at the site of the Development Projects, which could have a material adverse effect on our business, financial condition or results of operations.

Our information technology and other systems are subject to cyber security risk including misappropriation of customer information or other breaches of information security.

We rely on information technology and other systems to maintain and transmit customers' personal and/or financial information, credit card information, mailing lists and other information. We have taken steps designed to safeguard our customers' personal and financial information and have implemented systems designed to meet all requirements of the Payment Card Industry standards for data protection. However, our information and processes are subject to the ever-changing threat of

compromised security, in the form of a risk of potential breach, system failure, computer virus or unauthorized or fraudulent access or use by unauthorized individuals. The steps we take to deter and mitigate these risks may not be successful, and any resulting compromise or loss of data or systems could adversely impact operations or regulatory compliance and could result in remedial expenses, fines, litigation and loss of reputation, potentially impacting our financial results. Although we have invested in and deployed security systems and developed processes that are designed to protect all sensitive data, prevent data loss and reduce the impact of any security breach, such measures cannot provide absolute security.

Item 1B. Unresolved Staff Comments.

None.

Item 2. Properties.

EPT Property

The Destination Resort is located on approximately 1,700 acres in the Town of Thompson in Sullivan County, New York, which is owned by EPT and EPR LP, two wholly-owned subsidiaries of EPR Properties, an entity unrelated to the Company. The Development Projects are part of the Initial Projects being developed at the Destination Resort, which will also include the Waterpark.

Casino Lease

On December 28, 2015, Montreign Operating entered into the Casino Lease with EPT for the lease of the parcel on which the Casino Project would be built (the "Casino Parcel"). The Casino Lease has a term that expires on the earlier of (i) March 31, 2086 and (ii) Montreign Operating giving EPT written notice of its election to terminate the Casino Lease (the "Termination Option") at least 12 months prior to any one of five Option Dates (as defined below). The Option Dates (each an "Option Date") under the Casino Lease mean each of the 20th, 30th, 40th, 50th and 60th anniversary of the commencement of the Casino Lease. Upon Montreign Operating's timely notice of exercise of its Termination Option, the Casino Lease shall be automatically terminated effective as of the applicable Option Date.

The following table represents the fixed rent payments under the Casino Lease:

Year ending December 31,	Fixed Rent Payments due by Period
	(in thousands)
2017 (1) (2)	$10,000
2018 (2) (3)	10,500
2019 (3)	7,500
2020 (3)	7,500
2021 (3)	8,000
2022 to 2056 (3)	354,624

(1) Until February 29, 2016, the Company continued to make payments of $500,000 per month it would have made under the Original Option Agreement. From March 1, 2016 until February 28, 2017, option payments made by the Company under the Original Option Agreement, which totaled $8.5 million, were applied against fixed rent due by the Company under the Casino Lease for such period.
(2) From March 1, 2017 through August 31, 2018, fixed rent shall equal $1 million per month.
(3) From September 1, 2018 through the remainder of the term of the Casino Lease, fixed rent shall equal $7.5 million per year, subject to an eight percent escalation every five years (the "Base Amount").

In addition to fixed rent, beginning on September 2018 and through the remainder of the term of the Casino Lease (the "Percentage Rent Period"), Montreign Operating is obligated to pay an annual percentage rent equal to five percent of the Eligible Gaming Revenue (as such term is defined in the Casino Lease) in excess of the Base Amount for the Percentage Rent Period. Additionally, the lease is a net lease, and Montreign Operating has an obligation to pay the rent payable under the Casino Lease and other costs related to Montreign Operating's use and operation of the Casino Parcel, including the special district tax assessments allocated to the Casino Parcel, not to exceed the capped dollar amount applicable to the Casino Parcel.

Golf Course Lease

On December 28, 2015, ERREI entered into a sublease ("the Golf Course Lease") with the Destination Resort Developer for the lease of the parcel on which the Golf Course would be built (the "Golf Course Parcel"). The terms of the Golf Course Lease are substantially similar to the Casino Lease, subject to the material differences described below. Under the Golf Course Lease, there is no percentage rent due. Fixed rent payments under the Golf Course Lease are represented in the table below:

Year ending December 31,	Fixed Rent Payments due by Period
	(in thousands)
2017 (1) (2)	$0
2018 (2)	0
2019 (2)	125
2020 (2)	150
2021 (2)	150
2022 to 2056 (2) (3)	7,825

(1) From the date the Golf Course Lease commenced (the "Golf course Lease Commencement Date") and until the date on which the Golf Course opens for business, which is expected to be in Spring 2019 (the "Golf Course Opening Date"), fixed rent payments shall equal $0.
(2) From the Golf Course Opening Date and continuing for the 10 years thereafter, fixed rent shall equal $150,000 per year.
(3) From March 2029 through the remainder of the term of the Golf Course Lease, fixed rent shall equal $250,000 per year.

The Golf Course Lease is a net lease and ERREI is obligated to pay the rent payable under the Golf Course Lease and other costs related to ERREI's use and operation of the Golf Course Parcel, including the special district tax assessments allocated to the Golf Course Parcel, not to exceed the capped dollar amount applicable to the Golf Course Parcel. This obligation shall not be assessed against ERREI prior to 60 months following the Golf Course Lease Commencement Date.

Entertainment Village Lease

On December 28, 2015, ERREII entered into a sublease (the "Entertainment Village Lease") with the Destination Resort Developer, for the lease of the parcel on which the Entertainment Village Project would be built (the "Entertainment Village Parcel" and, together with the Casino Parcel and the Golf Course Parcel, the "Development Project Parcels"). The terms of the Entertainment Village Lease are substantially similar to the Casino Lease, subject to the material differences described below. Under the Entertainment Village Lease, there is no percentage rent due. Fixed rent payments under the Entertainment Village Lease are represented in the table below:

Year ending December 31,	Fixed Rent Payments due by Period
	(in thousands)
2017 (1) (2)	$0
2018 (2)	50
2019 (2)	150
2020 (2)	150
2021 (2)	150
2022 to 2056 (2) (3)	7,825

(1) From the date the Entertainment Village Lease commenced (the "Entertainment Village Commencement Date") and until the date on which Entertainment Village opens for business, which is expected to be September 2018 (the Entertainment Village Opening Date"), fixed rent payments shall equal $0.
(2) From the Entertainment Village Opening Date and continuing for the 10 years thereafter, fixed rent shall equal $150,000 per year.

(3) From September 2028 through the remainder of the term of the Entertainment Village Lease, fixed rent shall equal $250,000 per year.

The Entertainment Village Lease is a net lease and ERREII is obligated to pay the rent payable under the Entertainment Village Lease and other costs related to ERREII's use and operation of the Entertainment Village Parcel, including the special district tax assessments allocated to the Entertainment Village Parcel, not to exceed the capped dollar amount applicable to the Entertainment Village Parcel. This obligation shall not be assessed against ERREII prior to 60 months following the Entertainment Village Lease Commencement Date.

On January 24, 2017, each of the Casino Lease, the Golf Course Lease and the Entertainment Village Lease were amended to correct scrivener's errors in the legal descriptions of the Casino Parcel, Golf Course Parcel and Entertainment Village Parcel.

Purchase Option Agreement

On December 28, 2015, Montreign Operating, EPT and EPR LP entered into the Purchase Option Agreement, pursuant to which EPT and EPR LP collectively granted to Montreign Operating the option to purchase (the "Purchase Option") all, but not fewer than all, of the Development Project Parcels for a purchase price of $175 million ($200 million after the sixth anniversary of the License Award Effective Date), less a credit of up to $25 million for certain previous payments made by the Project Parties.

Under the Purchase Option Agreement, EPR LP also grants to Montreign Operating the option to purchase not less than all of the balance of the EPT Property (the "Destination Resort Property"), excluding the Development Project Parcels, for an additional fee (the "Destination Resort Purchase Option"). The Destination Resort Purchase Option may be exercised only simultaneously with or after the exercise of the Purchase Option. The Destination Resort Purchase Option commenced on December 28, 2015 and shall expire on the earlier to occur of (a) the expiration of the Purchase Option Period or (b) March 1, 2026.

Under the Purchase Option Agreement, EPR LP also granted to Montreign Operating a right of first offer ("ROFO") with respect to all or any portion of the Destination Resort Property. Under the terms of the ROFO, if EPR LP makes an offer to or rejects an offer made by Montreign, Operating then EPR LP shall be precluded for a period of six months from transferring the designated portion of the Destination Resort Property at a price and on terms which are on the whole substantially equivalent to or worse than those proposed or accepted by Montreign Operating. The ROFO commenced on December 28, 2015 and shall continue in full force and effect until EPR LP has sold, leased, licensed or otherwise transferred all of the Destination Resort Property.

Monticello Land

Monticello Casino and Raceway is located on a 232-acre parcel of land in Monticello, New York, which is held in fee by MRMI. Monticello Casino and Raceway includes a 3,000-seat enclosed grandstand, a clubhouse bar, pari-mutuel wagering facilities (including simulcasting), a paddock, exterior barns and related facilities for the horses, drivers, and trainers. In addition, our VGM operation is conducted in the renovated lower level of the grandstand portion of Monticello Casino and Raceway, which includes a 45,000-square foot gaming floor with a central bar and lounge and a separate high stakes VGM area, a buffet and a two-outlet food court with seating capacity for up to 350 patrons, employee changing areas, storage and maintenance facilities, surveillance and security facilities and systems, cashier's cage and accounting and marketing areas, as well as parking areas for cars and buses. The corporate offices of the Company are located on the second floor of the building at Monticello Casino and Raceway.

Item 3. Legal Proceedings.

We are a party from time to time to various legal actions that arise in the normal course of business. In the opinion of management, the resolution of these other matters will not have a material adverse effect on our consolidated financial position, results of operations or cash flows.

Item 4. Mine Safety Disclosures.

Not applicable.

PART II

Item 5. Market for Registrant's Common Equity, Related Stockholder Matters and Issuer Purchases of Equity Securities.

Market Information

Our common stock is listed on the NASDAQ Global Market under the symbol "NYNY". The following table sets forth the high and low sale prices for the common stock for the periods indicated, as reported by the NASDAQ Global Market:

	High	Low
Year ended December 31, 2015		
First Quarter	$ 37.95	$ 21.90
Second Quarter	29.95	22.45
Third Quarter	27.15	19.70
Fourth Quarter	25.00	19.74
Year ended December 31, 2016		
First Quarter	$ 18.70	$ 11.38
Second Quarter	20.00	12.65
Third Quarter	20.38	14.78
Fourth Quarter	25.19	17.87

Holders

According to Continental Stock Transfer & Trust Company, there were approximately 204 holders of record of our common stock at March 10, 2017.

Dividends

During the past three fiscal years, we did not declare or pay any cash dividends with respect to our common stock and we do not anticipate declaring any cash dividends on our common stock in the foreseeable future. We intend to retain all future earnings for use in the development of our business. There can be no assurance that we will have, at any time, sufficient surplus under Delaware law to be able to pay any dividends.

The Board authorized the cash payment of Series B Preferred Stock quarterly dividends for the 2016 calendar year. Payments in the amount of $32,000 were made on April 1, July 1, October 3, 2016 and January 3, 2017, respectively.

On March 2, 2016, our Board authorized the cash payment of dividends due for the year ended December 31, 2015 on the Series B Preferred Stock in the amount of approximately $167,000. At December 31, 2015, the Company had undeclared cash dividends on the Series B Preferred Stock of $167,000 and payment was made the same day. The cash dividend was calculated as if it were a dividend issued in shares of our comment stock, which in accordance with the terms of the Series B Preferred Stock means the amount of the cash payment is the annual cash dividend value (if it had been paid quarterly) multiplied by 1.3.

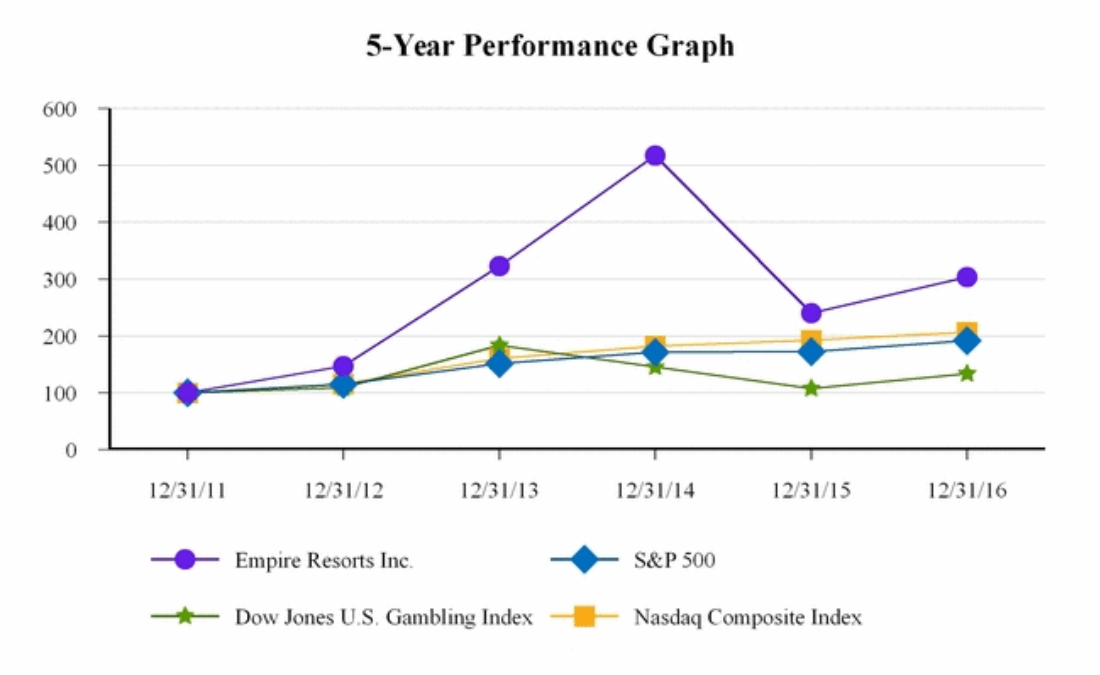
On February 9, 2015, our Board authorized the issuance of 5,102 shares of our common stock in payment of dividends due for the year ended December 31, 2014 on our Series B Preferred Stock. The recorded value of these shares was approximately $159,000. At December 31, 2014, the Company had undeclared dividends on the Series B Preferred Stock of approximately $159,000.

Performance Graph

The following graph shows a comparison of the five year total cumulative returns of an investment of $100 in cash on December 31, 2011 in (i) our common stock (ii) the Nasdaq Composite Index (iii) S&P 500 and (iv) the Dow Jones U.S. Gambling Index. All values assume reinvestment of the full amount of all dividends (to date, we have not declared any dividends).

This stock performance graph shall not be deemed "filed" with the SEC or subject to Section 18 of the Securities Exchange Act, nor shall it be deemed incorporated by reference in any of our filings under the Securities Act of 1933, as amended (the "Securities Act").

Comparison of cumulative total return on investment since December 31, 2011:



	Period Ending					
	12/31/2011	12/31/2012	12/31/2013	12/31/2014	12/31/2015	12/31/2016
Empire Resorts Inc.	100.00	146.67	322.67	517.33	240.00	303.33
S&P 500	100.00	115.22	151.56	171.26	172.54	191.91
Dow Jones U.S. Gambling Index	100.00	108.91	183.68	145.47	107.76	133.84
Nasdaq Composite Index	100.00	115.91	160.32	181.80	192.21	206.63

Securities Authorized for Issuance Under Equity Compensation Plans

The following table provides information as of December 31, 2016 with respect to the shares of our common stock that may be issued under our existing equity compensation plans:

	(1)		(2)
	Number of securities to be issued upon exercise of outstanding options, warrants and rights (column - a)	Weighted-average exercise price of outstanding options, warrants and rights (column - b)	Number of securities remaining available for future issuance under equity compensation plans (excluding securities reflected in column (a)) (column - c)
2005 - Equity compensation plan approved by security holders	167,000	$ 37.84	—
2015 - Equity compensation plan approved by security holders	—	$ —	2,501,309
Total	167,000	$ 37.84	2,501,309

(1) These amounts reflect stock options granted under our 2005 Equity Incentive Plan (pursuant to which no grants may be made on or after May 23, 2015, but such grants may extend beyond that date) and awards that may be granted under our 2015 Equity Incentive Plan.

(2) On March 8, 2016, pursuant to the terms of the 2015 Equity Incentive Plan, the Board of Directors determined to increase the number of shares available for grant under such plan by 1,663,209 shares for a total amount of shares available for grants of 2,600,707. Such change was effective as of March 20, 2016.

Item 6. Selected Financial Data

The following table presents our selected consolidated financial data for the five most recent fiscal years, which is derived from our audited consolidated financial statements and the notes to those statements. Because the data in this table does not provide all of the data contained in our consolidated financial statements, including the related notes, you should read "Management's Discussion and Analysis of Financial Condition and Results of Operations," and our consolidated financial statements, including the related notes, contained elsewhere in this document and other data we have filed with the U.S. Securities and Exchange Commission.

	Fiscal Year Ended December 31, (amounts in thousands, except per share data):				
	2016	**2015**	**2014**	**2013**	**2012**
Statement of Operations					
Revenues:					
Gaming	$ 59,633	$ 60,463	$ 59,831	$ 63,642	$ 63,402
Food, beverage, racing and other	10,668	11,171	9,683	12,776	12,220
Gross revenues	70,301	71,634	69,514	76,418	75,622
Less: Promotional allowances	(2,847)	(3,468)	(4,288)	(5,457)	(3,649)
Net revenues	67,454	68,166	65,226	70,961	71,973
Operating costs and expenses:					
Gaming	44,238	44,525	44,160	47,129	45,700
Food, beverage, racing and other	10,174	10,493	9,986	11,470	10,959
Selling, general and administrative	19,692	12,648	11,599	12,734	12,895
Development Projects expenses	12,970	32,514	12,207	18,009	—
Stock-based compensation	2,722	596	636	385	647
Depreciation	1,341	1,350	1,324	1,354	1,380
Total operating costs and expenses	91,137	102,126	79,912	91,081	71,581
(Loss)/income from operations	(23,683)	(33,960)	(14,686)	(20,120)	392

Amortization of deferred financing costs	(105)	(27)	(91)	(74)	(30)
Interest expense	(419)	(2,616)	(9,128)	(1,331)	(1,063)
Interest income	10	—	—	—	4
Loss before income taxes	(24,197)	(36,603)	(23,905)	(21,525)	(697)
Income tax provision	—	7	7	17	16
Net loss	(24,197)	(36,610)	(23,912)	(21,542)	(713)
Undeclared dividends on preferred stock	(168)	(178)	(188)	(5,508)	(1,551)
Net loss applicable to common stockholders	$ (24,365)	$ (36,788)	$ (24,100)	$ (27,050)	$ (2,264)
Weighted average common shares outstanding:					
Basic	28,221	10,749	9,286	8,501	5,990
Diluted	28,221	10,749	9,286	8,501	5,990
Loss per common share:					
Basic	$ (0.86)	$ (3.42)	$ (2.60)	$ (3.18)	$ (0.38)
Diluted	$ (0.86)	$ (3.42)	$ (2.60)	$ (3.18)	$ (0.38)
Other Data:					
Net cash provided by / (used in):					
Operating activities	$ (12,921)	$ (31,380)	$ (15,492)	$ (4,342)	$ 3,049
Investing activities, including capital costs	(236,196)	(20,298)	(1,549)	(6,567)	(8,588)
Financing activities	253,717	51,655	15,950	9,372	1
Capital expenditures	(1,974)	(767)	(1,542)	(1,036)	(548)
Capitalized Development Projects costs	(157,305)	(4,074)	—	—	—
Development costs	—	—	—	(5,574)	(8,197)
Balance Sheet Data:					
Cash and cash equivalents	$ 11,012	$ 6,412	$ 6,435	$ 7,526	$ 9,063
Total assets	339,758	65,418	39,867	39,047	52,449
Long-term debt	—	17,426	17,426	17,426	17,426
Series E Preferred Stock payable, including current portion	—	30,480	30,480	22,800	—
Stockholders' equity/(deficit)	279,566	(1,459)	(17,101)	(9,775)	24,813
Operating Data:					
Total number of video gaming machines	1,070	1,070	1,090	1,090	1,090
Total number of video lottery terminals	1,070	1,070	1,090	1,090	1,090
Total number of electronic table game positions	40	20	20	20	20

Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations.

The following discussion of our financial condition and results of operations should be read in conjunction with the consolidated Financial Statements and Notes thereto appearing elsewhere in this document.

Overview

Empire Resorts, Inc. (“Empire,” and, together with its subsidiaries, the “Company,” “us,” “our” or “we”) was organized as a Delaware corporation on March 19, 1993, and since that time has served as a holding company for various subsidiaries engaged in the hospitality and gaming industries.

The Destination Resort and the Development Projects

On December 21, 2015, our indirect wholly-owned subsidiary, Montreign Operating Company, LLC (“Montreign Operating”), was awarded a gaming license (a “Gaming Facility License”) by the New York State Gaming Commission (“NYSGC”) to operate a resort casino (the “Casino Project”) to be located at the site of a four-season destination resort being developed in the Town of Thompson in Sullivan County approximately 90 miles from New York City (the “Destination Resort”), which is described below. Montreign Operating is the sole holder of a Gaming Facility License in the Hudson Valley-Catskill Area, which consists of Columbia, Delaware, Dutchess, Greene, Orange, Sullivan and Ulster counties in New York State. The Gaming Facility License became effective on March 1, 2016.

The Destination Resort is located on approximately 1,700 acres owned by EPT Concord II, LLC and EPR Concord II, L.P., two wholly-owned subsidiaries of EPR Properties, which is unrelated to the Company. The Casino Project is part of the initial phase of the Destination Resort, which will also include an Indoor Waterpark Lodge ("Waterpark"), Rees Jones redesigned "Monster" Golf Course (the "Golf Course Project") and an Entertainment Village, which will include hotel, retail, restaurants and other amenities (the "Entertainment Village Project" and, together with the Casino Project and the Golf Course Project, the "Development Projects"). In addition to the Casino Project, subsidiaries of Montreign Operating are responsible for developing the Entertainment Village and the Golf Course Project. Subsidiaries of EPR Properties are responsible for developing the Waterpark.

Monticello Casino and Raceway

Through our wholly-owned subsidiary, Monticello Raceway Management, Inc. ("MRMI"), we currently own and operate Monticello Casino and Raceway, a 45,000-square foot video gaming machine ("VGM") and harness horseracing facility located in Monticello, New York, approximately 90 miles northwest of New York City. Monticello Casino and Raceway operates 1,110 VGMs, which includes 1,070 video lottery terminals ("VLTs") and 40 electronic table game positions ("ETGs"). VGMs are similar to slot machines, but they are connected to a central system and report financial information to the central system. ETGs include the games of roulette, blackjack and 3-card poker. We also generate racing revenues through pari-mutuel wagering on the running of live harness horse races, the import simulcasting of harness and thoroughbred horse races from racetracks across the country and internationally, and the export simulcasting of our races to offsite pari-mutuel wagering facilities.

In a letter dated December 23, 2016, the NYSGC approved MRMI's racetrack and simulcast license renewal applications for calendar year 2017. Generally, the annual license renewal process requires the NYSGC to review the financial responsibility, experience, character and general fitness of MRMI and its management.

Off-Balance Sheet Arrangements

None.

Critical Accounting Policies

The preparation of financial statements in conformity with generally accepted accounting principles (“GAAP”) in the United States of America requires management to make estimates and assumptions that affect the amounts reported in the financial statements and judgments related to the application of certain accounting policies.

While we base our estimates on historical experience, current information and other factors deemed relevant, actual results could differ from those estimates. We consider accounting estimates to be critical to our reported financial results if (i) the accounting estimate requires us to make assumptions about matters that are uncertain and (ii) different estimates that we

reasonably could have used for the accounting estimate in the current period, or changes in the accounting estimate that are reasonably likely to occur from period to period, would have a material impact on our financial statements.

We consider our policies for revenue recognition to be critical due to the continuously evolving standards and industry practice related to revenue recognition, changes which could materially impact the way we report revenues. Accounting polices related to: accounts receivable, impairment of long-lived assets, stock-based compensation, fair value and income taxes are also considered to be critical as these policies involve considerable subjective judgment and estimation by management. Critical accounting policies, and our procedures related to these policies, are described in detail below.

Revenue recognition and Promotional allowances

Revenues represent (i) gaming revenue and (ii) food and beverage sales, racing and other miscellaneous revenue. Gaming revenue is the net difference between gaming wagers and payouts for prizes from VGMs, non-subsidized free play and accruals related to the anticipated payout of progressive jackpots. Progressive jackpots contain base jackpots that increase at a progressive rate based on the credits played and are charged to revenue as the amount of the jackpots increase. We recognize gaming revenues before deductions of such related expenses as NYSGC share of VGM revenue and the Monticello Harness Horsemen's Association (the "MHHA") and Agriculture and New York State Horse Breeding Development Fund's contractually and/or statutory required percentages.

Food, beverage, racing and other revenue, includes food and beverage sales, racing revenue earned from pari-mutuel wagering on live harness racing and simulcast signals to and from other tracks and miscellaneous income. We recognize racing revenues before deductions of such related expenses as purses, stakes and awards. Some elements of the racing revenues from Off-Track Betting Corporations ("OTBs") are recognized as collected, due to uncertainty of receipt of and timing of payments.

Net revenues are recognized net of certain sales incentives in accordance with Financial Accounting Standards Board ("FASB") Accounting Standards Certification ("ASC") 605-50, "Revenue Recognition—Customer Payments and Incentives".

The retail value of complimentary food, beverages and other items provided to our guests is included in gross revenues and then deducted as promotional allowances. The estimated cost of providing such food, beverage and other items as promotional allowances is included in food, beverage, racing and other expense. In addition, promotional allowances include non-subsidized free play offered to our guests based on their relative gaming worth.

Accounts receivable

Accounts receivable, net of allowances, are stated at the amount we expect to collect. When required, an allowance for doubtful accounts is recorded based on information on the collectability of specific accounts. Accounts are considered past due or delinquent based on contractual terms and how recently payments have been received and our judgment of collectability. In the normal course of business, we settle wagers for other racetracks and are exposed to credit risk. These wagers are included in accounts receivable. Account balances are charged against the allowance after all means of collection have been exhausted and the potential for recovery is considered remote.

Impairment of long-lived assets

We periodically review the carrying value of our long-lived assets in relation to historical results, as well as management's best estimate of future trends, events and overall business climate. If such reviews indicate an issue as to whether the carrying value of such assets may not be recoverable, we will then estimate the future cash flows generated by such assets (undiscounted and without interest charges). If such future cash flows are insufficient to recover the carrying amount of the assets, then impairment is triggered and the carrying value of any impaired assets would then be reduced to fair value.

Stock-based compensation

The cost of all stock-based awards to employees, including grants of employee stock options and restricted stock, is recognized in the financial statements based on the fair value of the awards at grant date. The fair value of stock option awards is determined using the Black-Scholes valuation model on the date of grant. The fair value of restricted stock awards is equal to the market price of our common stock on the date of grant. The fair value of stock-based awards is recognized as stock-based compensation expense on a straight-line basis over the requisite service period from the date of grant.

Fair value

We follow the provisions of ASC 820, "Fair Value Measurement," issued by the FASB for financial assets and liabilities. This standard defines fair value, provides guidance for measuring fair value, requires certain disclosures and discusses valuation techniques, such as the market approach (comparable market prices), the income approach (present value of future income or cash flow) and the cost approach (cost to replace the service capacity of an asset or replacement cost). We chose not to elect the fair value option as prescribed by FASB, for our financial assets and liabilities that had not been previously carried at fair value. Our financial instruments are comprised of current assets and current liabilities. Current assets and current liabilities approximate fair value due to their short-term nature.

Development Project costs

Because the Company's application for a Gaming Facility License was submitted in a competitive environment and the Company could not be certain it would be awarded a Gaming Facility License, all costs incurred for the Development Projects were expensed until the Company was awarded a Gaming Facility License on December 21, 2015. Once awarded the Gaming Facility License, the Company began capitalizing qualifying expenditures on the Development Projects during the fourth quarter of 2015.

Results of Operations - Fiscal 2016 Compared to Fiscal 2015

The results of operations for the years ended December 31, 2016 and 2015 are summarized below (dollars in the table in thousands):

	2016	2015	Variance $	Variance %
Revenues:				
Gaming	$ 59,633	$ 60,463	$ (830)	(1)%
Food, beverage, racing and other	10,668	11,171	(503)	(5)%
Gross revenues	70,301	71,634	(1,333)	(2)%
Less: Promotional allowances	(2,847)	(3,468)	621	(18)%
Net revenues	67,454	68,166	(712)	(1)%
Costs and expenses:				
Gaming	44,238	44,525	(287)	(1)%
Food, beverage, racing and other	10,174	10,493	(319)	(3)%
Selling, general and administrative	19,692	12,648	7,044	56 %
Development Projects expenses	12,970	32,514	(19,544)	(60)%
Stock-based compensation	2,722	596	2,126	357 %
Depreciation	1,341	1,350	(9)	(1)%
Total costs and expenses	91,137	102,126	(10,989)	(11)%
Loss from operations	(23,683)	(33,960)	10,277	(30)%
Amortization of deferred financing costs	(105)	(27)	(78)	289 %
Interest expense	(419)	(2,616)	2,197	(84)%
Interest income	10	—	10	— %
Loss before income taxes	(24,197)	(36,603)	12,406	(34)%
Income tax provision	—	7	(7)	(100)%
Net loss	$ (24,197)	$ (36,610)	$ 12,413	(34)%

Gaming revenue

Gaming revenue decreased by $830,000, or 1%, for the twelve months ended December 31, 2016 as compared to the twelve months ended December 31, 2015, from $60.5 million to $59.6 million. The decrease in non-subsidized free play of $735,000, was a primary driver for the revenue decrease. Handle increased by approximately $23.6 million, or 2.7%, for the same period. The average daily win per unit decreased from $149.24 for the twelve months ended December 31, 2015 to $147.05 for the twelve months ended December 31, 2016. VGM hold percentage decreased to 6.4% for the twelve months ended December 31, 2016 versus 6.8% for the 12 months ended December 31, 2015. The severe weather during the first quarter of 2015 significantly impacted gaming revenue. During the second and third quarters, we made a concentrated effort to reduce our marketing to lower-tier unprofitable segments and we increased our marketing efforts to regain mid and high-level tier players. While this results in lower overall win, it generally increases overall player profitability. During the first quarter of 2016, we benefited from milder weather as compared to 2015, resulting in an increase in revenue of $2.3 million.

Food, beverage, racing and other revenue

Food, beverage, racing and other revenue decreased by $503,000, or 5%, for the twelve months ended December 31, 2016 as compared to the twelve months ended December 31, 2015, from $11.2 million to $10.7 million. Racing revenue decreased by $220,000 for the twelve months ended December 31, 2016 as compared to the twelve months ended December 31, 2015. The decrease in racing revenue was primarily due to the reduced horse population and the number of available drivers during fiscal 2016, resulting in fewer races.

Food and beverage revenue decreased by $322,000 for the twelve months ended December 31, 2016 as compared to the twelve months ended December 31, 2015. During the fourth quarter, the Company renovated the Terrace Room, which was closed from November 5th through December 19th. The Terrace Room reopened as the Upper Deck as an a la carte restaurant

on December 19th. The Company closed the buffet restaurant Monticello Raceway and Casino on December 19, 2016. These changes, along with the business disruption during the construction period, caused the reduction in food and beverage revenues during the fourth quarter, as compared to the prior year.

Other revenue increased by approximately $39,000 for the December 31, 2016 period, principally due to an increase in ATM revenue.

Promotional allowances

Promotional allowances decreased by $621,000, or 18%, for the twelve months ended December 31, 2016 as compared to the twelve months ended December 31, 2015, from $3.5 million to $2.8 million. Non-subsidized free play (free play subject to NYSGC and other commissions) decreased approximately $741,000. Food and beverage complimentaries decreased by $28,000 during the twelve months ended December 31, 2016 due to the closing of the buffet on December 19th and renovation of the Terrace Room, which was closed from November 5th through December 19th. The Terrace Room reopened as the Upper Deck on December 19th. These decreases were partially offset by Players Club awards, which increased by $148,000 for the twelve months ended December 31, 2016 as compared to the twelve months ended December 31, 2015.

Gaming costs

Gaming costs decreased by approximately $287,000, or 1%, for the twelve months ended December 31,016 as compared to the twelve months ended December 31, 2015, from $44.5 million to $44.2 million, primarily due to lower NYSGC and other commissions of $477,000, resulting from lower gaming revenue. Other gaming expenses decreased by approximately $72,000, primarily due to lower utilities expense. Partially offsetting these decreases were increases in gaming wages and related benefits increased by approximately $262,000 as compared to the same period in the prior year, due to higher labor and payroll related expenses.

Food, beverage, racing and other costs

Food, beverage, racing and other costs decreased approximately $319,000, or 3%, for the twelve months ended December 31, 2016 as compared to the twelve months ended December 31, 2015, from $10.5 million to $10.2 million. Cost of sales decreased by $173,000 for the twelve months ended December 31, 2016 as compared to the twelve months ended December 31, 2015, primarily due to lower revenues. Additionally, racing payroll and benefits decreased by $97,000 and food and beverage related expenses decreased slightly by $49,000.

Selling, general and administrative expenses

Selling, general and administrative expenses increased approximately $7.0 million, or 56%, for the twelve months ended December 31, 2016 as compared to the twelve months ended December 31, 2015, from $12.6 million to $19.7 million. Legal and accounting fees increased approximately $1.9 million, attributable to increased legal fees in 2016 related to financing efforts for the Casino Project. Other professional service fees increased $2.0 million related to the New Jersey Casino ballot referendum. Consulting fees increased $1.5 million, of which $1.0 million was due to costs incurred with financing efforts not consummated related to the Development Projects. Additionally, a $758,000 charge was recorded in the fourth quarter of 2016 related to a contingent matter which was settled in the first quarter of 2017. Marketing-related expenses increased $251,000, primarily due to increased promotions, premium game fees, advertising and agency fees. Payroll and related benefits costs increased approximately $572,000, primarily due to the new Executive Chairman position. Real estate taxes increased $392,000, due to the phase out of the Empire Zone Tax Credit. New York State franchise taxes increased $119,000 during 2016, due to the increase in the Company's stockholder equity. These increases were partially offset by savings in director fees of $441,000 and insurance expense of $117,000 as compared to the twelve months ended December 31, 2015.

Development expenses

Development expenses decreased by $19.5 million, or 60%, for the twelve month period ended December 31, 2016 as compared to the 2015 period, from $32.5 million to $13.0 million. Development costs in fiscal 2016 were approximately $13.0 million and consisted of $10.4 million of land lease expenses, $400,000 of real estate taxes, $324,000 in consultants and other professional service fees, $482,000 of insurance expenses, $164,000 in legal fees and $1.2 million of pre-opening expenses primarily related to payroll and benefits, and marketing costs. Development expenses significantly decreased in 2016 as compared to 2015, due the capitalization of certain development costs starting in December 2015 after the award of the Gaming Facility License to the Company by the NYSGC.

Stock-based compensation expense

Stock-based compensation increased by $2.1 million, or 357%, for the twelve months ended December 31, 2016 as compared to the twelve months ended December 31, 2015, from $596,000 to $2.7 million. This increase was primarily due to the amortization of compensation expense attributable to restricted stock grants during 2016. In addition, this amount included a $600,000 accrual for compensation granted to the horseman based on a contractual agreement pursuant to the MHHA agreement.

Interest expense

Interest expense decreased $2.2 million, or 84%, for the twelve months ended December 31, 2016 as compared to the twelve months ended December 31, 2015, from $2.6 million to $419,000. The decrease in interest expense was due to the redemption of the Series E Preferred Stock on March 6, 2016 and the conversion of the 2010 Kien Huat Note on March 17, 2016. Increases in the redemption value of our Series E Preferred Stock were recorded as a non-cash charge to interest expense in the amount of $231,000 and $1.2 million for the twelve months ended December 31, 2016 and 2015, respectively.

Results of Operations - Fiscal 2015 Compared to Fiscal 2014

The results of operations for the years ended December 31, 2015 and 2014 are summarized below (dollars in thousands):

	2015	2014	Variance $	Variance %
Revenues:				
Gaming	$ 60,463	$ 59,831	$ 632	1 %
Food, beverage, racing and other	11,171	9,683	1,488	15 %
Gross revenues	71,634	69,514	2,120	3 %
Less: Promotional allowances	(3,468)	(4,288)	820	19 %
Net revenues	68,166	65,226	2,940	5 %
Costs and expenses:				
Gaming	44,525	44,160	365	1 %
Food, beverage, racing and other	10,493	9,986	507	5 %
Selling, general and administrative	12,648	11,599	1,049	9 %
Development Projects expenses	32,514	12,207	20,307	166 %
Stock-based compensation	596	636	(40)	(6)%
Depreciation	1,350	1,324	26	2 %
Total costs and expenses	102,126	79,912	22,214	28 %
Loss from operations	(33,960)	(14,686)	(19,274)	(131)%
Amortization of deferred financing costs	(27)	(91)	64	70 %
Interest expense	(2,616)	(9,128)	6,512	71 %
Loss before income taxes	(36,603)	(23,905)	(12,698)	(53)%
Income tax provision	7	7	—	— %
Net loss	$ (36,610)	$ (23,912)	$ (12,698)	(53)%

Gaming revenue

Gaming revenue increased by approximately $632,000, or 1%, for the twelve months ended December 31, 2015 as compared to the twelve months ended December 31, 2014, from $59.8 million to $60.5 million. Handle increased approximately $34.3 million, or 4.0%, for the same period and the average daily win per unit increased from $147.68 to $149.24 for the same period. VGM hold percentage decreased to 6.8% for the twelve months ended December 31, 2015 versus 7.0% for the same period in 2014.

Food, beverage, racing and other revenue

Food, beverage, racing and other revenue increased by approximately $1.5 million, or 15%, for the twelve months ended December 31, 2015 as compared to the twelve months ended December 31, 2014, from $9.7 million to $11.2 million. Racing revenue increased by $1.5 million for the twelve months ended December 31, 2015 as compared to the twelve months ended December 31, 2014. The increase in racing revenue was due to the ability to simulcast races to and from facilities outside of New York State for all of fiscal 2015. During fiscal 2014, we could not simulcast outside New York State because we did not have a horsemen's agreement effective from February 1, 2014 through July 20, 2014.

Other revenue increased by approximately $83,000 for the twelve months ended December 31, 2015 as compared to the twelve months ended December 31, 2014, due to higher valet and ATM revenue.

The increases in racing and other revenue were offset by a decrease in food and beverage revenue of approximately $88,000, for the twelve months ended December 31, 2015 as compared to the twelve months ended December 31, 2014. The food and beverage revenue decrease was due to reduced covers and patron counts partially offset by an increase in the buffet price.

Promotional allowances

Promotional allowances decreased by approximately $820,000, or 19%, for the twelve months ended December 31, 2015 as compared to the twelve months ended December 31, 2014, from $4.3 million to $3.5 million, primarily due to an increase in subsidized free play. Due to a 2014 legislative change our subsidized free play percentage increased from 10% to 15%, resulting in a reduction of expenses subject to NYSGC and other commissions of approximately $756,000. Non-subsidized free play is the free play that is not included in the subsidized free play program and is included in the calculation of gaming revenue and promotional allowances. In addition, food and beverage complimentaries decreased by approximately $99,000. These decreases were partially offset by a increase in player club awards of approximately $35,000.

Gaming costs

Gaming costs increased by approximately $365,000, or 1%, for the twelve months ended December 31, 2015 as compared to the twelve months ended December 31, 2014, from $44.2 million to $44.5 million. NYSGC and other commissions increased approximately $990,000, resulting from higher cash gaming revenue, as compared to the same period in the prior year. Gaming wages and related benefits decreased by approximately $418,000 as compared to the same period in the prior year due to reduced labor and payroll related expenses. Other gaming expenses decreased by approximately $207,000 due to lower utilities expense and software repairs and maintenance.

Food, beverage, racing and other costs

Food, beverage, racing and other costs increased approximately $507,000, or 5%, for the twelve months ended December 31, 2015 as compared to the twelve months ended December 31, 2014, from $10.0 million to $10.5 million, primarily due to higher purse expenses of $428,000. Purse expenses were lower in fiscal 2014 due to the inability to simulcast races to and from facilities outside of New York State, because we did not have a horsemen's agreement between February 1, 2014 and July 20, 2014, whereas we were able to simulcast to and from facilities outside New York State for all of fiscal 2015. Additionally, racing payroll and related expenses increased, and food and beverage benefits and related expenses increased by $213,000. These increases were offset by decreased food and beverage cost of goods of $134,000, largely due to lower revenues.

Selling, general and administrative expenses

Selling, general and administrative expenses increased approximately $1.0 million, or 9%, for the twelve months ended December 31, 2015 as compared to the twelve months ended December 31, 2014, from $11.6 million to $12.6 million. Legal and consulting costs increased $456,000 in 2015. Other expenses increased $634,000 due to higher sales tax, real estates taxes, outside director compensation and insurance costs. Payroll and related benefits costs increased approximately $401,000 largely due to payroll and related costs and bonuses. These increases were offset by a decrease in marketing-related expenses of $442,000 for the twelve months ended December 31, 2015 as compared to the twelve months ended December 31, 2014.

Development Projects expenses

Development expenses increased approximately $20.3 million, or 166%, for the twelve months ended December 31, 2015 as compared to the twelve months ended December 31, 2014, from $12.2 million to $32.5 million. Architectural, engineering fees and construction manager costs increased $22.1 million. Non-refundable payments pertaining to the Option Agreement with EPR increased $1.5 million for the same period. These increases were offset by a $2.3 million decrease in legal, consultants and other professional service fees, which included a $1.3 million write-off of legal fees for previous development expenses and the $1.0 million application fee paid during 2014.

Interest expense

Interest expense decreased approximately $6.5 million, or 71%, for the twelve months ended December 31, 2015 as compared to the twelve months ended December 31, 2014, from $9.1 million to $2.6 million. Increases in the redemption value of our Series E Preferred Stock are recorded as a non-cash charge to interest expense. The amount of interest expense recorded was approximately $1.2 million and $7.7 million for the twelve months ended December 31, 2015 and 2014, respectively, to record the liability at its contractually stated redemption value at the end of the each reporting period pursuant to the terms of a settlement agreement.

Liquidity and Capital Resources

The accompanying consolidated financial statements have been prepared on a basis that contemplates the realization of assets and the satisfaction of liabilities and commitments in the normal course of business. The Company anticipates that its current cash and cash equivalents balances and cash generated from operations, as well as the net proceeds of the Term Loan Facility, the Kien Huat Montreign Loan and the $35 million required to be deposited into the lender-controlled account created under the Term Loan Facility, which are discussed below, will be sufficient to meet the working capital requirements and the expected costs of the Development Projects for at least the next twelve months. Additionally, following the opening of the Casino Project to the public, which is expected to occur in March 2018, the Revolving Credit Facility will be available for use towards the working capital needs, capital expenditures and for other general corporate purposes of the Project Parties, subject to our ability to meet the conditions therein. Whether these resources are adequate to meet the Company's liquidity needs beyond that period, including with respect to the costs of the Entertainment Village Project and the Golf Course Project, will depend on the Company's growth and operating results and the final designs and progress of the Development Projects. In addition, cost overruns, delays in the construction schedule or changes in design are among the factors that may increase the projected costs of the Development Projects, which may also require us to raise additional capital. Pursuant to the Term Loan Facility, Montreign Operating is required to deposit $35 million into the lender-controlled account holding the net proceeds of the Term Loan Facility and the Kien Huat Montreign Loan, which amount will be used towards the Entertainment Village Project. Of this payment, $15 million is required to be deposited by June 30, 2017 and the remaining $20 million is required to be deposited by December 31, 2017. The $35 million must be funded in the form of a further equity contribution to Montreign Operating. The Company expects to raise additional equity capital by the dates on which the deposits must be made. Additionally, the Company expects to raise furniture, fixtures and equipment ("FF&E") financing of up to $40 million to complete the Development Projects. To raise additional capital necessary for the Development Projects, to meet obligations under the Term Loan Facility or for the general corporate purposes of the Company, we may seek to enter into strategic agreements, joint ventures or similar agreements or we may sell additional debt or equity in public or private transactions, including pursuant to the commitment of Kien Huat to backstop the Follow-on Rights Offering (as defined and discussed below) in the amount of $35 million, which is discussed below. The sale of additional equity could result in additional dilution to the Company's existing stockholders, and financing arrangements may not be available to us, or may not be available in amounts or on acceptable terms.

As of December 31, 2016, we had total current assets of approximately $17.3 million and current liabilities of approximately $51.5 million. As of December 31, 2016, our total assets included approximately $26.4 million of remaining net proceeds from the January 2016 Rights Offering (as defined and discussed below) which are presented on the balance sheet as a non-current asset. In the twelve months ended December 31, 2016, we incurred $13.0 million of development expenses and approximately $192.0 million in capitalized costs for the Development Projects, of which $151.1 million was paid through December 31, 2016.

We have had continuing net losses and negative cash flow from operating activities, including a loss from operations of $24.2 million for the twelve months ended December 31, 2016. The net loss for the twelve months ended December 31, 2016 was primarily related to the Company's $13.0 million ongoing development expenditures with respect to the Development Projects, which expenses could not be capitalized pursuant to the relevant accounting rules.

In fiscal year 2016, total Development Projects costs incurred were approximately $205.0 million, of which $192.0 million was capitalized and $13.0 million was expensed. Development Projects costs expensed consisted of $10.4 million of casino lease costs, $488,000 in legal, consultants and other professional service fees, $400,000 of real estate taxes, $482,000 of insurance expense and $1.2 million of pre-opening expenses, including salaries and benefits, and marketing expenses.

In fiscal year 2015, total Development Projects costs incurred were approximately $42.9 million, of which $32.5 million was expensed and consisted of $2.7 million in legal, consultants and other professional service fees, $4.6 million of non-refundable payments pertaining to the Option Agreement with EPR, $24.1 million in architectural, engineering fees, construction manager costs and subcontractor costs, and a $975,000 payment to Kien Huat for a commitment fee pursuant to the 2015 Standby Purchase Agreement. The $42.9 million includes $10.4 million of Capitalized Project Development costs during the fourth quarter of 2015, following the award of the Gaming Facility License.

In fiscal year 2014, the Casino Project development costs incurred were approximately $12.2 million and consisted of $5.1 million in legal fees, construction manager costs, consultants and other professional service fees, $3.1 million of non-refundable payments pertaining to the Option Agreement with EPR, $2.1 million in architectural fees, a $1.0 million payment for the casino license application fee, and a $900,000 payment to Kien Huat with respect to its commitment to provide equity financing in connection with the Casino Project.

The Gaming Facility License became effective on the License Award Effective Date, which was March 1, 2016. The Gaming Facility License is subject to certain conditions established by the NYSGC, which conditions, in addition to the Minimum Capital Investment, require Montreign Operating, and any successors and assigns, among other things, to (i) pay an aggregate license fee of $51 million within 30 days of the License Award Effective Date; and (ii) deposit via cash or bond 10% of the Minimum Capital Investment on the License Award Effective Date. On March 1, 2016, the Minimum Capital Investment Deposit, in the aggregate amount of $85.4 million, was made. The Company's portion of the Minimum Capital Investment Deposit was made in the form of a deposit bond representing approximately $65.1 million, which is 10% of the Company's Minimum Capital Investment in the Casino Project, Golf Course and Entertainment Village and EPR's portion was made in the form of a deposit bond representing approximately $20 million, which is 10% of their Minimum Capital Investment in the Infrastructure and the Waterpark. The NYSGC will release the Minimum Capital Investment Deposit upon confirmation that 85% of the Company's proposed Minimum Capital Investment has been expended. The collateral security for the bond shall be paid to the surety in installments as follows: (i) $15 million was paid on February 26, 2016; (ii) $20 million on July 1, 2017; and (iii) approximately $30.1 million on January 15, 2018, unless the surety has been discharged and released from all liability under the bond and the surety has determined that all obligations to the surety under an indemnity agreement have been fully paid, performed and satisfied.

To support the Company's financing needs for the Casino Project and, subsequently, the Entertainment Village Project and the Golf Course Project, Kien Huat entered into a series of commitment letters with the Company, which was last amended on September 22, 2015 (as amended, the "Kien Huat Commitment Letter"). Pursuant to the Kien Huat Commitment Letter, Kien Huat committed to an equity investment in the Company in the aggregate amount of $375 million in support of the Development Projects, the redemption of the Series E Preferred Stock, par value $.01 per share (the "Series E Preferred Stock") and for working capital purposes. Kien Huat has invested an aggregate of $340 million of such commitment pursuant to the January 2015 Standby Purchase Agreement and the January 2016 Standby Purchase Agreement, each of which are described below. Kien Huat also agreed to participate in, and backstop, a follow-on rights offering on the same terms and conditions and at the same subscription price as the January 2016 Rights Offering (as described below), in an amount not to exceed $35 million (the "Follow-On Rights Offering").

On January 5, 2015, the Company commenced a rights offering (the "January 2015 Rights Offering") of non-transferable subscription rights to holders of record of our common stock and Series B Preferred Stock as of January 2, 2015. In connection with the January 2015 Rights Offering, on January 2, 2015, the Company and Kien Huat entered into a standby purchase agreement (the "January 2015 Standby Purchase Agreement"). Pursuant to the January 2015 Standby Purchase Agreement, Kien Huat agreed to exercise in full its basic subscription rights granted in the January 2015 Rights Offering within 10 days of its grant. In addition, Kien Huat agreed it would exercise all rights not otherwise exercised by the other holders in an aggregate amount not to exceed $50 million. The January 2015 Rights Offering closed on February 6, 2015 and the Company received net proceeds of approximately $49.5 million, which were used to pay the expenses of the Casino Project. Pursuant to the January 2015 Standby Purchase Agreement, we paid Kien Huat a commitment fee of $250,000 and reimbursed Kien Huat for its expenses in the amount of $40,000.

On January 4, 2016, the Company commenced a rights offering (the "January 2016 Rights Offering") of transferable subscription rights to holders of record of our common stock and Series B Preferred Stock as of January 4, 2016. In connection with the January 2016 Rights Offering, on December 31, 2015, the Company and Kien Huat entered into a standby purchase agreement (the "January 2016 Standby Purchase Agreement"). Pursuant to the January 2016 Standby Purchase Agreement, Kien Huat agreed to (i) exercise its basic subscription rights to acquire approximately $30 million of our common stock within 10 days of the commencement of the January 2016 Rights Offering with a closing proximate thereto and (ii) to exercise the remainder of its basic subscription rights prior to the expiration date of the January 2016 Rights Offering. In addition, Kien Huat agreed it would exercise all rights not otherwise exercised by the other holders in the January 2016 Rights Offering, which we refer to as the standby purchase, upon the same terms as other holders in an aggregate amount not to exceed $290 million. The January 2016 Rights Offering closed on February 17, 2016 and the Company received net proceeds of approximately $286.0 million, which were used to pay the expenses of the Development Projects, to redeem the Series E Preferred Stock and for the working capital purposes of the Company. Pursuant to the January 2016 Standby Purchase Agreement, we paid Kien Huat a commitment fee of $1,450,000 and reimbursed Kien Huat for its expenses in the amount of $50,000.

Upon consummation of the January 2016 Rights Offering, the convertible promissory note in the original principal amount of $35 million, of which $17.4 million was outstanding as of December 31, 2015 (the "2010 Kien Huat Note"), which was issued by the Company to Kien Huat pursuant to the Loan Agreement, dated November 17, 2010, by and between the Company and Kien Huat (the "2010 Kien Huat Loan Agreement") , was converted into 1,332,058 shares of our common stock pursuant to

the terms of the 2010 Kien Huat Loan Agreement (the "Note Conversion"). The Note Conversion, along with the payment of interest due, satisfied the 2010 Kien Huat Note in full.

To further fund the Development Projects, on January 24, 2017, Montreign Operating entered into the Term Loan Agreement and Montreign Holding entered into the Kien Huat Montreign Loan Agreement. In connection with the consummation of the Term Loan Agreement, on the Loan Closing Date, that certain construction loan agreement (the "Kien Huat Construction Loan Agreement") dated October 13, 2016, by and between Kien Huat and Montreign Operating expired on its terms without being utilized by Montreign Operating. Montreign Operating and Kien Huat had entered into the Kien Huat Construction Loan Agreement to provide Montreign Operating with short-term access to up to $50 million of loans to pay the expenses of the Casino Project while the debt financing for the Development Projects was being finalized.

The Term Loan Agreement provides Montreign Operating with an aggregate principal amount of $485 million senior secured first lien term loans, consisting of $70 million of Term A Loans and $415 million of Term B Loans. The obligations of Montreign Operating under the Term Loan Facility are guaranteed by the Montreign Subsidiaries and are secured by security interests in substantially all of the assets of the Project Parties, as well as by a pledge of the membership interests in Montreign Operating. In connection with the Term Loan Facility, Empire provided a completion guaranty capped at $30 million on the completion of construction of the Casino Project and the Entertainment Village Project. Pursuant to the Kien Huat Montreign Loan Agreement, Montreign Holding obtained the Kien Huat Montreign Loan in the principal amount of $32.3 million, of which $32.0 million will be contributed to the Development Project Parties as capital contribution. The obligations of Montreign Holding under the Kien Huat Montreign Loan Agreement are secured by a pledge of all the membership interests in Montreign Holding. Following the opening of the Casino Project to the public, the Company will be able to utilize the Revolving Credit Facility for the working capital needs, capital expenditures and other general corporate purposes of the Project Parties.

As a condition to the Term Loan Facility, the net proceeds of the Term B loan, all of which was funded on the Loan Closing Date, and the Kien Huat Montreign Loan, were deposited into certain accounts controlled by the lenders under the Term Loan Facility. Any drawings on the Term A loan, which may be made only after all of the proceeds of the Term B loan have been deployed in the construction of the Development Projects or the operations of the Project Parties, will also be deposited into the same lender-controlled accounts. The Company has a further obligation to fund these lender-controlled accounts with $35 million in support of the Entertainment Village Project of this amount, $15 million is required to be deposited by June 30, 2017 and the remaining $20 million is required to be deposited by December 31, 2017. The Company expects to raise additional equity capital by the dates on which the deposits must be made. In order to access the funds (including the net proceeds of the Term Loan Facility and the Kien Huat Montreign Loan) held in these lender-controlled accounts, Montreign Operating must satisfy the applicable disbursement conditions set forth in the Term Loan Agreement and ancillary agreements, such as providing evidence that the withdrawn funds are used for permitted purposes in connection with the Development Projects. Moreover, at the time of each borrowing under the Term Loan Facility, Montreign Operating must confirm that the representations and warranties made in the Term Loan Agreement have not been breached and that it is otherwise compliant with the terms of the Term Loan Agreement. In connection with the Term Loan Agreement, the Company incurred $778,000 of financing fees as of December 31, 2016. These fees have been capitalized and were included in other assets at December 31, 2016 and will be amortized on a straight-line basis over the life of the Term Loan Agreement.

The Term Loan Agreement, the Kien Huat Montreign Loan Agreement and the Revolving Credit Agreement contain representations and warranties and affirmative covenants, negative covenants and financial covenants that are usual and customary, including representations, warranties and covenants that, among other things, restrict the ability of Montreign Holding and the Project Parties to incur additional debt, incur or permit liens on assets, make investments and acquisitions, consolidate or merge with any other company, or make dividends or other distributions. In addition, in order to be able to draw on the $70 million Term A Loan, Montreign Operating must meet the conditions to borrowing under the Term A Loan at the time of such draw down. Pursuant to the loan agreements, the Project Parties may not incur additional indebtedness except for, among other things, obligations pursuant to hedging agreements required under the Term Loan Agreement, capital lease obligations and purchase money indebtedness (including FF&E financing) in an amount not exceeding $40.0 million, subordinated indebtedness so long as the proceeds are applied pursuant to the terms of the Term Loan Agreement and other indebtedness not exceeding $10.0 million. The Project Parties and Montreign Holding may not make any dividend or other distribution, redeem or otherwise acquire any equity securities or subordinated indebtedness or enter into advisory, management or consulting agreements with an affiliate of any Project Party other than payments pursuant to tax sharing agreements, distributions in an amount not exceeding 1% of the net revenues of the Project Parties in any fiscal year, repurchase of capital stock of the Company in an amount not exceeding $1.0 million and required by the NYSGC, and certain available amounts of cash based on the application of financial covenants. In the fiscal quarter following the full opening of the Casino Project, as such term is defined in the Term Loan Agreement, Montreign Operating will also be subject to financial covenants relating to interest coverage ratio, lien leverage ratio and consolidated capital expenditures. Under the Kien Huat

Montreign Loan Agreement, until the Kien Huat Montreign Loan is repaid in full, Montreign Holding is also restricted from making distributions to Empire except (i) for purposes of paying bona fide corporate overhead expenses in an amount not to exceed $9 million (which amount is subject to further reduction pursuant to the Kien Huat Montreign Loan Agreement) and (ii) pursuant to a tax sharing agreement. Montreign Operating will have mandatory prepayment obligations under the Term Loan Agreement based on Excess Cash Flow, as defined in the Term Loan Agreement, after the Full Opening Date. In addition, following the discharge of the Term Loan Facility in full, Montreign Operating will have mandatory prepayment obligations under the Revolving Credit Facility based on excess cash flow, as defined in the Revolving Credit Agreement.

To comply with requirements under the Term B Loan, Montreign Operating entered into an interest rate cap agreement (the "Interest Rate Cap") with Credit Suisse International on a notional amount of $415 million (subject to reduction in accordance with the terms of the Interest Rate Cap). In return for the premium paid on entering into the Interest Rate Cap, Montreign Operating will receive monthly payments from Credit Suisse International starting on May 31, 2017 if one-month US Dollar LIBOR is greater than the agreed cap rate.

We may also seek to enter into other strategic agreements, joint ventures or similar agreements or we may sell additional debt or equity in public or private transactions in support of the Development Projects and our ongoing operations. On October 14, 2016, we filed a universal shelf registration statement on Form S-3 (the "Shelf Registration Statement") covering the offer and sale of $250 million of our securities. The Shelf Registration Statement, which also carried over $83.8 million of our securities registered on an expiring shelf registration statement that remained unsold, was declared effective on November 17, 2016. As of March 10, 2017, we had up to approximately $333.0 million available for future issuances under the Shelf Registration Statement. Unless otherwise indicated in a prospectus supplement, the Company expects the net proceeds from the sale of securities will be used to support the Development Projects, capital expenditures at Empire's existing facility, working capital and for other general corporate purposes. The Company may also use a portion of the net proceeds to acquire or invest in businesses, products and technologies that are complementary to our business.

From time to time, we may pursue various strategic business opportunities. These opportunities may include proposed development and/or management of, investment in or ownership of additional gaming operations through direct investments, acquisitions, joint venture arrangements and other transactions. We are not currently exploring such opportunities. We can provide no assurance that we will successfully identify such opportunities or that, if we identify and pursue any of these opportunities, any of them will be consummated.

Net cash used in operating activities was approximately $12.9 million, $31.4 million and $15.5 million during the twelve months ended December 31, 2016, 2015 and 2014, respectively. We continue to have significant cash flows used in operating activities due to the costs we are incurring related to the Development Projects. We expensed $13.0 million, $32.5 million and $12.2 million of development costs during the twelve months ended December 31, 2016, 2015 and 2014, respectively. Additionally, our operating cash flows for the twelve months ended December 31, 2015 and 2014 were negatively impacted by severe weather during the first quarter that caused a reduction in revenues and economic and competitive factors impacting the region.

Net cash used in investing activities was approximately $236.2 million, $20.3 million and $1.5 million for the twelve months ended December 31, 2016, 2015 and 2014, respectively.The increase of approximately $209.8 million between 2016 and 2015 was primarily due to the payment of project development costs.

Net cash provided by financing activities was approximately $253.7 million, $51.7 million and $16.0 million for the twelve months ended December 31 2016, 2015 and 2014, respectively. Approximately $286.0 million of net proceeds were received from the January 2016 Rights Offering and $30.7 million was used for the Series E Preferred Stock redemption. Approximately $49.5 million of net proceeds were received from the 2015 Rights Offering. The Company received approximately $2.7 million in proceeds from the exercise of options and warrants during 2015. In addition during 2015, the Company redeemed 26,667 shares of its Series E Preferred Stock, held by beneficial owners other than the Bryanston Group, for approximately $533,000. Approximately $13.2 million of net proceeds were received in 2014 from the 2014 Rights Offering, which is net of $189,000 of expenses.

Contractual Obligations

	Payments due by period (in thousands)				
	Total	Less than 1 year	1 – 3 years	3 – 5 years	Years 6 - 40
Casino lease (a)	$ 398,124	$ 10,000	$ 18,000	$ 15,500	$ 354,624
Golf Course lease (b)	8,250	—	125	300	7,825
Entertainment Village lease (c)	8,325	—	200	300	7,825
Total	$ 414,699	$ 10,000	$ 18,325	$ 16,100	$ 370,274

(a) Annual fixed rent payments under the Casino Lease are as follows: (i) for the period December 2015 through March 1, 2016, payments of $500,000 per month; (ii) for the year following March 1, 2016, no payments are required; (iii) beginning March 2017 through August 2018 payments of $1 million per month; (iv) beginning September 2018 payments of $625,000 per month escalating every five years by 8% through the end of the lease term.

(b) Annual fixed rent payments under the Golf Course lease are as follows: (i) $0 prior to the date the Golf Course opens for business to the public (the "Golf Course Opening Date"); (ii) $150,000 for the first 10 years following the Golf Course Opening Date; and (iii) $250,000 thereafter for the remainder of the term of the Golf Course Lease.

(c) Annual fixed rent payments under the Entertainment Village lease are as follows: (i) $0 prior to the date any portion of entertainment village first opens for business to the public (the "EV Opening Date"); (ii) $150,000 for the first 10 years following the EV Opening Date; and (iii) $250,000 thereafter for the remainder of the term of the Entertainment Village Lease.

Item 7A. Quantitative and Qualitative Disclosures About Market Risk.

Market risk is the risk of loss arising from adverse changes in market rates and prices, including interest rates, commodity prices and equity prices. We do not hold any market risk sensitive investments. The Company's outstanding debt as of December 31, 2015, which bore interest at fixed interest rates, was repaid in the first quarter of 2016. As a result, we were minimally subject to market risk with respect to interest rates on outstanding debt during fiscal 2016. The Company had no outstanding debt at December 31, 2016. In early 2017, pursuant to the terms of the Term Loan Agreement, the Company entered into an interest rate cap agreement with Credit Suisse International.

Item 8. Financial Statements and Supplementary Data.

Report of Independent Registered Public Accounting Firm
On Financial Statements

The Board of Directors and Stockholders of Empire Resorts, Inc.

We have audited the accompanying consolidated balance sheets of Empire Resorts, Inc. and subsidiaries as of December 31, 2016 and 2015, and the related consolidated statements of operations, stockholders' equity/(deficit), and cash flows for each of the three years in the period ended December 31, 2016. Our audit also included the financial statement schedule listed in the index at Item 15. These financial statements and schedule are the responsibility of the Company's management. Our responsibility is to express an opinion on these financial statements and schedule based on our audits.

We conducted our audits in accordance with the standards of the Public Company Accounting Oversight Board (United States). 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, the financial statements referred to above present fairly, in all material respects, the consolidated financial position of Empire Resorts, Inc. and subsidiaries at December 31, 2016 and 2015, and the consolidated results of their operations and their cash flows for each of the three years in the period ended December 31, 2016, in conformity with U.S. generally accepted accounting principles. Also, in our opinion, the related 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.

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States), Empire Resorts, Inc.'s internal control over financial reporting as of December 31, 2016, based on criteria established in Internal Control-Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission "(2013 framework)," as applicable and our report dated March 13, 2017 expressed an unqualified opinion thereon.

/s/ Ernst & Young LLP

Philadelphia, Pennsylvania
March 13, 2017

Report of Independent Registered Public Accounting Firm
On Internal Control Over Financial Reporting

The Board of Directors and Stockholders of Empire Resorts, Inc.

We have audited Empire Resorts, Inc. and subsidiaries' internal control over financial reporting as of December 31, 2016, based on criteria established in Internal Control- Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission "(2013 framework)" (the COSO criteria). Empire Resorts, Inc. and subsidiaries' management is responsible for maintaining effective internal control over financial reporting, and for its assessment of the effectiveness of internal control over financial reporting included in the accompanying Management's Report on Internal Control Over Financial Reporting within Item 9A. Our responsibility is to express an opinion on the company's internal control over financial reporting based on our audit.

We conducted our audit in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether effective internal control over financial reporting was maintained in all material respects. Our audit included obtaining an understanding of internal control over financial reporting, assessing the risk that a material weakness exists, testing and evaluating the design and operating effectiveness of internal control based on the assessed risk, and performing such other procedures as we considered necessary in the circumstances. We believe that our audit provides a reasonable basis for our opinion.

A company's internal control over financial reporting is a process designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles. A company's internal control over financial reporting includes those policies and procedures that (1) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the company; (2) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that receipts and expenditures of the company are being made only in accordance with authorizations of management and directors of the company; and (3) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use, or disposition of the company's assets that could have a material effect on the financial statements.

Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

In our opinion, Empire Resorts, Inc. and subsidiaries maintained, in all material respects, effective internal control over financial reporting as of December 31, 2016, based on the COSO criteria.

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States), the consolidated balance sheets of Empire Resorts, Inc. and subsidiaries as of December 31, 2016 and 2015, and the related consolidated statements of operations, stockholders' equity/(deficit) and cash flows for each of the three years in the period ended December 31, 2016 of Empire Resorts, Inc. and subsidiaries and our report dated March 13, 2017 expressed an unqualified opinion thereon.

/s/ Ernst & Young LLP

Philadelphia, Pennsylvania
March 13, 2017

EMPIRE RESORTS, INC. AND SUBSIDIARIES
CONSOLIDATED BALANCE SHEETS

(In thousands, except for per share data)

	December 31, 2016	December 31, 2015
Assets		
Current assets:		
Cash and cash equivalents	$ 11,012	$ 6,412
Restricted cash	1,078	1,341
Accounts receivable, net	921	1,156
Prepaid expenses and other current assets	4,335	4,841
Total current assets	17,346	13,750
Property and equipment, net	26,415	25,789
Capitalized Development Projects costs	202,438	10,405
Cash for Development Projects	26,384	15,472
Intangible assets	51,000	—
Cash collateral for deposit bond	15,000	—
Other assets	1,175	2
Total assets	$ 339,758	$ 65,418
Liabilities and Stockholders' equity/(deficit)		
Current liabilities:		
Accounts payable	$ 2,268	$ 1,244
Accrued Development Projects costs	41,933	10,811
Accrued expenses and other current liabilities	7,347	8,416
Total current liabilities	51,548	20,471
Long-term loan, related party	—	17,426
Series E Preferred Stock payable- 0 and 1,551 shares as of December 31, 2016 and 2015	—	28,980
Other long-term liabilities	8,644	—
Total liabilities	60,192	66,877
Stockholders' equity/(deficit):		
Preferred Stock, 5,000 shares authorized; $0.01 par value		
Series B, $29 per share liquidation value, 44 shares issued and outstanding	—	—
Common stock, $0.01 par value, 150,000 shares authorized, 31,156 and 9,561 shares issued and outstanding at December 31, 2016 and 2015, respectively	312	96
Additional paid-in capital	533,813	228,512
Accumulated deficit	(254,559)	(230,067)
Total stockholders' equity/(deficit)	279,566	(1,459)
Total liabilities and stockholders' equity/(deficit)	$ 339,758	$ 65,418

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

EMPIRE RESORTS, INC. AND SUBSIDIARIES
CONSOLIDATED STATEMENTS OF OPERATIONS
YEARS ENDED DECEMBER 31,
(In thousands, except for per share data)

	2016	2015	2014
Revenues:			
Gaming	$ 59,633	$ 60,463	$ 59,831
Food, beverage, racing and other	10,668	11,171	9,683
Gross revenues	70,301	71,634	69,514
Less: Promotional allowances	(2,847)	(3,468)	(4,288)
Net revenues	67,454	68,166	65,226
Operating costs and expenses:			
Gaming	44,238	44,525	44,160
Food, beverage, racing and other	10,174	10,493	9,986
Selling, general and administrative	19,692	12,648	11,599
Development Projects expenses	12,970	32,514	12,207
Stock-based compensation	2,722	596	636
Depreciation	1,341	1,350	1,324
Total operating costs and expenses	91,137	102,126	79,912
Loss from operations	(23,683)	(33,960)	(14,686)
Amortization of deferred financing costs	(105)	(27)	(91)
Interest expense	(419)	(2,616)	(9,128)
Interest income	10	—	—
Loss before income taxes	(24,197)	(36,603)	(23,905)
Income tax provision	—	7	7
Net loss	(24,197)	(36,610)	(23,912)
Undeclared dividends on preferred stock	(168)	(178)	(188)
Net loss applicable to common stockholders	$ (24,365)	$ (36,788)	$ (24,100)
Weighted average common shares outstanding:			
Basic	28,221	10,749	9,286
Diluted	28,221	10,749	9,286
Loss per common share:			
Basic	$ (0.86)	$ (3.42)	$ (2.60)
Diluted	$ (0.86)	$ (3.42)	$ (2.60)

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

EMPIRE RESORTS, INC. AND SUBSIDIARIES
CONSOLIDATED STATEMENTS OF STOCKHOLDERS' (DEFICIT) / EQUITY
YEARS ENDED DECEMBER 31, 2016, 2015 and 2014
(In thousands)

	Preferred Stock*								
	Series B		Series E		Common Stock		Additional paid-in capital	Accumulated Deficit	Total Stockholders' (Deficit)/Equity
	Shares	Amount	Shares	Amount	Shares	Amount			
Balances, December 31, 2013	44	$ —	28	$ 1	7,299	$ 73	$ 159,319	$ (169,167)	$ (9,775)
Declared and paid dividends on preferred stock	—	—	—	—	6	—	218	(218)	—
Common stock issued from exercise of rights offering	—	—	—	—	428	4	13,364	—	13,368
Stock issuance	—	—	—	—	27	—	(188)	—	(188)
Options exercised	—	—	—	—	141	2	2,768	—	2,770
Stock-based compensation	—	—	—	—	—	—	636	—	636
Net loss	—	—	—	—	—	—	—	(23,912)	(23,912)
Balances, December 31, 2014	44	—	28	1	7,901	79	176,117	(193,297)	(17,101)
Declared and paid dividends on preferred stock	—	—	—	—	5	—	159	(160)	(1)
Redemption of Series E Preferred Stock	—	—	(28)	(1)	—	—	(533)	—	(534)
Common stock issued from exercise of rights offering	—	—	—	—	1,409	14	49,514	—	49,528
Stock issuance	—	—	—	—	123	1	—	—	1
Options exercised	—	—	—	—	40	1	160	—	162
Stock-based compensation	—	—	—	—	—	—	596	—	596
Warrants exercised	—	—	—	—	83	1	2,499	—	2,500
Net loss	—	—	—	—	—	—	—	(36,610)	(36,610)
Balances, December 31, 2015	44	—	—	—	9,561	96	228,512	(230,067)	(1,459)
Declared and paid dividends on preferred stock	—	—	—	—	—	—	—	(295)	(295)
Kien Huat note conversion	—	—	—	—	1,332	14	17,412	—	17,426
Common stock issued from exercise of rights offering	—	—	—	—	20,139	201	285,802	—	286,003
Stock-based compensation	—	—	—	—	—	—	2,122	$ —	2,122
Other	—	—	—	—	124	1	(35)	—	(34)
Net loss	—	—	—	—	—	—	—	(24,197)	(24,197)
Balances, December 31, 2016	44	$ —	—	$ —	31,156	$ 312	$ 533,813	$ (254,559)	$ 279,566

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

EMPIRE RESORTS, INC. AND SUBSIDIARIES
CONSOLIDATED STATEMENTS OF CASH FLOWS

	Years Ended December 31,		
	2016	2015	2014
Cash flows provided by (used in) operating activities:	(in thousands)		
Net loss	$ (24,197)	$ (36,610)	$ (23,912)
Adjustments to reconcile net loss to net cash used in operating activities:			
Depreciation	1,341	1,350	1,324
Amortization of deferred financing costs	105	—	—
Provision / (Recovery) for doubtful accounts	—	10	(5)
Non-cash interest expense	231	1,241	7,680
Loss on disposal of property and equipment	5	1	1
Stock-based compensation	2,722	596	636
Changes in operating assets and liabilities:			
Restricted cash-NYSGC Lottery and Purse Accounts	268	354	(633)
Accounts receivable	235	(117)	135
Prepaid expenses and other current assets	506	(544)	(1,274)
Other assets	—	3	91
Accounts payable	1,024	(962)	(350)
Accrued expenses and other current liabilities	4,839	3,298	815
Net cash used in operating activities	(12,921)	(31,380)	(15,492)
Cash flows provided by (used in) investing activities:			
Purchase of property and equipment	(1,974)	(767)	(1,542)
Capitalized Development Project costs	(157,305)	(4,074)	—
Net change in cash for Development Projects	(10,912)	(15,472)	—
Restricted cash—racing capital improvement	(5)	15	(7)
Cash collateral for deposit bond	(15,000)	—	—
License fee payment for the casino project	(51,000)	—	—
Net cash used in investing activities	(236,196)	(20,298)	(1,549)
Cash flows provided by (used in) financing activities:			
Proceeds from rights offering, net of expenses	286,003	49,528	13,180
Series E Preferred Stock and dividend redemption	(30,711)	(533)	—
Series B Preferred Stock dividend payment	(263)	—	—
Proceeds from exercise of stock options and warrants	54	2,660	2,770
Deferred financing costs	(1,278)	—	—
Other payments	(88)	—	—
Net cash provided by financing activities	253,717	51,655	15,950
Net increase (decrease) in cash and cash equivalents	4,600	(23)	(1,091)
Cash and cash equivalents, beginning of year	6,412	6,435	7,526
Cash and cash equivalents, end of year	$ 11,012	$ 6,412	$ 6,435
Supplemental disclosures of cash flow information:			
Interest paid	$ 407	$ 1,398	$ 1,330
Income taxes paid	$ —	$ —	$ —
Noncash investing and financing activities:			
Common stock issued in settlement of preferred stock dividends	$ —	$ 159	$ 218
Conversion of long-term loan, related party into equity	$ 17,426	$ —	$ —
Project development costs included in accrued expenses	$ 40,783	$ 6,331	$ —

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

Note A. Organization and Nature of Business

Basis for Presentation

Empire Resorts, Inc. (“Empire,” and, together with its subsidiaries, the “Company,” “us,” “our” or “we”) was organized as a Delaware corporation on March 19, 1993, and since that time has served as a holding company for various subsidiaries engaged in the hospitality and gaming industries.

On December 21, 2015, our wholly-owned subsidiary, Montreign Operating Company, LLC ("Montreign Operating"), was awarded a license (a “Gaming Facility License”) by the New York State Gaming Commission ("NYSGC") to operate a resort casino (the "Casino Project") to be located at the site of a four-season destination resort planned for the Town of Thompson in Sullivan County (the “Destination Resort”), which is described below. Montreign Operating is the sole holder of a Gaming Facility License in the Hudson Valley-Catskill Area, which consists of Columbia, Delaware, Dutchess, Greene, Orange, Sullivan and Ulster counties in New York State. The Gaming Facility License became effective on March 1, 2016.

The Destination Resort is to be located on property owned by EPT Concord II, LLC and EPR Concord II, L.P. , two wholly-owned subsidiaries of EPR Properties ("EPR"), which is unrelated to the Company. The Casino Project is part of the initial phase of the Destination Resort, which will also include an Indoor Waterpark Lodge (the “Waterpark”), a Rees Jones redesigned “Monster” Golf Course (the “Golf Course Project”) and an Entertainment Village, which will include hotel, retail, restaurant and other amenities (the “Entertainment Village Project” and, together with the Casino Project and the Golf Course Project, the “Development Projects”). In addition to the Casino Project, subsidiaries of Montreign Operating are responsible for developing the Entertainment Village Project and the Golf Course Project. Subsidiaries of EPR are responsible for developing the Waterpark.

Through Empire’s wholly-owned subsidiary, Monticello Raceway Management, Inc. ("MRMI"), the Company currently owns and operates Monticello Casino and Raceway, a video gaming machine ("VGM") and harness horseracing facility located in Monticello, New York. The Company also generates racing revenues through pari-mutuel wagering on the running of live harness horse races, the import simulcasting of harness and thoroughbred horse races from racetracks across the country and internationally, and the export simulcasting of its races to offsite pari-mutuel wagering facilities.

In a letter dated December 23, 2016, the New York State Gaming Commission (the "NYSGC") approved MRMI's racetrack and simulcast license renewal applications for calendar year 2017. Generally, the annual license renewal process requires the NYSGC to review the financial responsibility, experience, character and general fitness of MRMI and its management.

Liquidity and Capital Resources

The consolidated financial statements have been prepared on a basis that contemplates the realization of assets and the satisfaction of liabilities and commitments in the normal course of business. The Company anticipates that its current cash and cash equivalents balances and cash generated from operations, as well as the net proceeds of the Term Loan Facility, the Kien Huat Montreign Loan and the $35 million required to be deposited into the lender-controlled account created under the Term Loan Facility, which are discussed below, will be sufficient to meet working capital requirements and the expected costs of the Development Projects for at least the next twelve months. Additionally, following the opening of the Casino Project to the public, which is expected to occur in March 2018, the Revolving Credit Facility will be available for use towards the working capital needs, capital expenditures and for other general corporate purposes of the Project Parties, subject to our ability to meet the conditions therein. Whether these resources are adequate to meet the Company’s liquidity needs beyond that period, including with respect to the costs of the Entertainment Village Project and the Golf Course Project, will depend on the Company’s growth and operating results and the final designs and progress of the Development Projects. In addition, cost overruns, delays in the construction schedule or changes in design are among the factors that may increase the projected costs of the Development Projects, which may also require us to raise additional capital. Pursuant to the Term Loan Facility, Montreign Operating is required to deposit $35 million into the lender-controlled account holding the net proceeds of the Term Loan Facility and the Kien Huat Montreign Loan, which amount will be used towards the Entertainment Village Project. Of this payment, $15 million is required to be deposited by June 30, 2017 and the remaining $20 million is required to be deposited by December 31, 2017. The $35 million must be funded in the form of a further equity contribution to Montreign

Operating, for which the Company expects to raise additional equity capital by the dates on which the deposits must be made. Additionally, the Company expects to raise furniture, fixtures and equipment ("FF&E") financing of up to $40 million to complete the Development Projects. To raise additional capital necessary for the Development Projects, to meet obligations under the Term Loan Facility or for the general corporate purposes of the Company, we may seek to enter into strategic agreements, joint ventures or similar agreements or we may sell additional debt or equity in public or private transactions, including pursuant to the commitment of Kien Huat to backstop a rights offering of Empire in the amount of $35 million. The sale of additional equity could result in additional dilution to the Company's existing stockholders, and financing arrangements may not be available to us, or may not be available in amounts or on acceptable terms.

As of December 31, 2016, we had total current assets of approximately $17.3 million and current liabilities of approximately $51.5 million. As of December 31, 2016, our total assets included approximately $26.4 million of remaining net proceeds from the January 2016 Rights Offering which are presented on the balance sheet as a non-current asset.

Note B. Summary of Significant Accounting Policies

Revenue recognition and Promotional allowances

Gaming revenue is the net difference between gaming wagers and payouts for prizes from VGMs, non-subsidized free play and accruals related to the anticipated payout of progressive jackpots. Progressive jackpots contain base jackpots that increase at a progressive rate based on the credits played and are charged to revenue as the amount of the jackpots increase. The Company recognizes gaming revenues before deductions of such related expenses as NYSGC's share of VGM revenue and the Monticello Harness Horsemen's Association (the "MHHA") and Agriculture and New York State Horse Breeding Development Fund's contractually required percentages.

Food, beverage, racing and other revenue, includes food and beverage sales, racing revenue earned from pari-mutuel wagering on live harness racing and simulcast signals to and from other tracks and miscellaneous income. The Company recognizes racing revenues before deductions of such related expenses as purses, stakes and awards. Some elements of the racing revenues from Off-Track Betting Corporations ("OTBs") are recognized as collected, due to uncertainty of receipt of and timing of payments.

Net revenues are recognized net of certain sales incentives in accordance with Financial Accounting Standards Board ("FASB") Accounting Standards Certification ("ASC") 605-50, "Revenue Recognition—Customer Payments and Incentives".

The retail value of complimentary food, beverages and other items provided to the Company's guests is included in gross revenues and then deducted as promotional allowances. The estimated cost of providing such food, beverage and other items as promotional allowances is included in food, beverage, racing and other expense. In addition, promotional allowances include non-subsidized free play offered to the Company's guests based on their relative gaming worth and prizes included in certain promotional marketing programs.

The retail value amounts included in promotional allowances for the years ended December 31, 2016, 2015 and 2014 were as follows:

	Year ended December 31,		
	2016	2015	2014
	(in thousands)		
Food and beverage	$ 1,486	$ 1,553	$ 1,656
Non-subsidized free play	978	1,720	2,476
Players Club awards	383	195	156
Total retail value of promotional allowances	$ 2,847	$ 3,468	$ 4,288

The estimated cost of providing complimentary food, beverages and other items for the years ended December 31, 2016, 2015 and 2014 were as follows:

	Year ended December 31,		
	2016	2015	2014
	(in thousands)		
Food and beverage	$ 2,080	$ 2,109	$ 2,206
Non-subsidized free play	577	1,015	1,461
Players Club awards	383	195	156
Total cost of promotional allowances	$ 3,040	$ 3,319	$ 3,823

Principles of consolidation

The consolidated financial statements include Empire's accounts and their wholly-owned subsidiaries. All inter-company balances and transactions are eliminated in consolidation.

Cash and cash equivalents

Cash and cash equivalents include cash on account, demand deposits and certificates of deposit with original maturities of three months or less at acquisition. The Company maintains significant cash balances with financial institutions, which are not covered by the Federal Deposit Insurance Corporation. The Company has not incurred any losses in such accounts and believes it is not exposed to any significant credit risk on cash.

Restricted cash

The Company has four types of restricted cash accounts.

Approximately $393,000 of cash is held in reserve in accordance with NYSGC regulations as of December 31, 2016 as listed below. The Company granted the NYSGC a security interest in the segregated cash account used to deposit NYSGC's share of net win in accordance with the NYSGC Rules and Regulations.

Under New York State Racing, Pari-Mutual Wagering and Breeding Law, MRMI is obliged to withhold a certain percentage of certain types of racing and pari-mutuel wagers towards the establishment of a pool of money, the use of which is restricted to the funding of approved capital improvements. Periodically during the year, MRMI petitions the NYSGC to certify that the noted expenditures are eligible for reimbursement from the capital improvement fund. The balance in this account was approximately $39,000 and $34,000 at December 31, 2016 and 2015, respectively. In April 2005, the New York law governing VGM operations was modified to provide an increase in the revenues retained by the VGM operator. A portion of that increase was designated as a reimbursement of marketing expenses incurred by the VGM operator. The amount of revenues directed toward this reimbursement is deposited in a bank account under the control of the NYSGC and the VGM operator. The funds are transferred from this account to the VGM operator upon the approval by NYSGC officials of the reimbursement requests submitted by the VGM operator. The balance in this account was approximately $354,000 and $629,000 at December 31, 2016 and 2015, respectively.

In connection with the Company's VGM operations, it agreed to maintain a restricted bank account. The balance in this account was $0 and $400,000, at December 31, 2016 and 2015, respectively. The NYSGC can make withdrawals directly from this account if they have not received their share of net win when due. In 2016, the NYSGC released to the Company the balance of $400,000 previously restricted by NYSGC.

In addition to the NYSGC restricted cash balances listed above, the Company established an account to segregate amounts collected and payable to Monticello Harness Horsemen's Association (the "MHHA") and pursuant to its contract. The balance in this account was approximately $685,000 and $278,000 at December 31, 2016 and 2015, respectively.

Accounts receivable

Accounts receivable, net of allowances, are stated at the amount the Company expects to collect. When required, an allowance for doubtful accounts is recorded based on information on the collectability of specific accounts. Accounts are considered past due or delinquent based on contractual terms, how recently payments have been received and the Company's judgment of collectability. In the normal course of business, the Company settles wagers for other racetracks and is exposed to credit risk. These wagers are included in accounts receivable. Account balances are charged against the allowance after all means of collection have been exhausted and the potential for recovery is considered remote. The Company recorded an allowance for doubtful accounts of approximately $171,000 and $171,000, as of December 31, 2016 and 2015.

Property and equipment

Property and equipment is stated at cost less accumulated depreciation. The Company provides for depreciation on property and equipment used by applying the straight-line method over the following estimated useful lives:

Assets	Estimated Useful Lives
Vehicles	5-10 years
Furniture, fixtures and equipment	5-10 years
Land improvements	5-20 years
Building improvements	5-40 years
Buildings	40 years

Deferred financing costs

Deferred financing costs are amortized on the straight-line method over the term of the related debt.

Development Projects Costs

Because the Company's application for a Gaming Facility License was submitted in a competitive environment and the Company could not be certain it would be awarded a Gaming Facility License, all costs incurred for the Development Projects were expensed until the Company was awarded the a Gaming License on December 21, 2015. Once awarded the Gaming Facility License, the Company began capitalizing qualifying expenditures on the Development Projects during the fourth quarter of 2015.

Impairment of long-lived assets

The Company periodically reviews the carrying value of its long-lived assets in relation to historical results, as well as management's best estimate of future trends, events and overall business climate. If such reviews indicate an issue as to whether the carrying value of such assets may not be recoverable, the Company will then estimate the future cash flows generated by such assets (undiscounted and without interest charges). If such future cash flows are insufficient to recover the carrying amount of the assets, then impairment is triggered and the carrying value of any impaired assets would then be reduced to fair value.

Loss contingencies

There are times when non-recurring events may occur that require management to consider whether an accrual for a loss contingency is appropriate. Accruals for loss contingencies typically relate to certain legal proceedings, customer and other claims and litigation. As required by generally accepted accounting principles in the United States of America ("GAAP"), the Company determines whether an accrual for a loss contingency is appropriate by assessing whether a loss is deemed probable and can be reasonably estimated. The Company analyzes its legal proceedings and other claims based on available information to assess potential liability. The Company develops its views on estimated losses in consultation with outside counsel handling its defense in these matters, which involves an analysis of potential results assuming a combination of litigation and settlement strategies.

Other long-term liabilities

The difference between our cash payments and straight-line rent on our leases of $8.0 million at December 31, 2016 is included in other long-term liabilities.

Common stock - loss per share

The Company computes basic loss per share by dividing net loss applicable to common shares by the weighted-average common shares outstanding for the period. Diluted loss per share reflects the potential dilution of earnings that could occur if securities or contracts to issue common stock were exercised or converted into common stock or resulted in the issuance of common stock that then shared in the loss of the entity. Since the effect of common stock equivalents is anti-dilutive with respect to losses, these common stock equivalents have been excluded from the Company's computation of loss per common

share. Therefore, basic and diluted loss per common share for the years ended December 31, 2016, 2015 and 2014 were the same.

The following table shows the approximate number of common stock equivalents outstanding at December 31, 2016, 2015 and 2014 that could potentially dilute basic loss per share in the future, but were not included in the calculation of diluted loss per share for the years ended December 31, 2016, 2015 and 2014, because their inclusion would have been anti-dilutive.

	Outstanding at December 31,		
	2016	2015	2014
Options	34,000	57,000	156,200
Warrants	133,000	133,000	216,600
Option Matching Rights	21,000	229,000	238,000
Restricted stock	216,000	137,000	37,000
Shares to be issued upon conversion of long-term loan, related party	—	1,332,000	1,332,000
Total	404,000	1,888,000	1,979,800

Pursuant to the terms of the Investment Agreement (defined in Note J), Kien Huat has the right to purchase an equal number of additional shares of common stock as are issued upon the exercise of certain options and warrants (the "Option Matching Rights"). On February 17, 2016, the Company provided written notice to Kien Huat regarding the exercise of certain Option Matching Rights to elect whether to exercise such Option Matching Rights. On February 17, 2016, Kien Huat declined to exercise the Option Matching Rights to purchase 204,706 shares of common stock.

Fair value

The Company follows the provisions of ASC 820, “Fair Value Measurement,” issued by the FASB for financial assets and liabilities. This standard defines fair value, provides guidance for measuring fair value, requires certain disclosures and discusses valuation techniques, such as the market approach (comparable market prices), the income approach (present value of future income or cash flow) and the cost approach (cost to replace the service capacity of an asset or replacement cost). The Company chose not to elect the fair value option as prescribed by FASB, for its financial assets and liabilities that had not been previously carried at fair value. The Company’s financial instruments are primarily comprised of current assets and current liabilities. Current assets and current liabilities approximate fair value due to their short-term nature.

Advertising

The Company records in selling, general and administrative expense the costs of general advertising, promotion and marketing programs at the time those costs are incurred. Advertising expense was approximately, $1.1 million, $1.1 million and $977,000 for the years ended December 31, 2016, 2015 and 2014, respectively.

Stock-based compensation

The cost of all share-based awards to employees, including grants of employee stock options and restricted stock, is recognized in the financial statements based on the fair value of the awards at grant date. The fair value of stock option awards is determined using the Black-Scholes valuation model on the date of grant. The fair value of restricted stock awards is equal to the market price of Empire’s common stock on the date of grant. The fair value of share-based awards is recognized as stock-based compensation expense on a straight-line basis over the requisite service period from the date of grant. As of December 31, 2016, there was approximately $2.4 million of total unrecognized compensation cost related to non-vested share-based compensation arrangements granted under the Company’s equity compensation plan. That cost is expected to be recognized over a period of 1.75 years. This expected cost does not include the impact of any future stock-based compensation awards.

Income taxes

The Company applies the asset and liability approach to financial accounting and reporting for income taxes. Deferred income tax assets and liabilities are computed for differences between the financial statement and tax bases of assets and liabilities that will result in future taxable or deductible amounts, based on enacted tax laws and rates for the periods in which the differences are expected to affect taxable income. Valuation allowances are established, when necessary, to reduce deferred tax assets to the amount expected to be realized.

Intangible Assets

In accordance with ASC 350, Intangibles - Goodwill and Other, the Company amortizes intangible assets over their estimated useful lives unless the Company determines their lives to be indefinite.

As a condition of the Gaming Facility License, the Company was granted a gaming license, for which it paid $51 million on February 25, 2016. The term of the gaming license is 10 years; however, amortization will not commence until the completion of construction and the opening to the general public of the Casino Project. Amortization will be recognized on a straight-line basis beginning at that time and continuing until the license is up for renewal in 2026. During the period that the Company is not amortizing the intangible asset, the Company will assess it for impairment annually or more frequently if events or changes in circumstances indicate that the asset might be impaired.

Estimates and assumptions

The preparation of financial statements in conformity with GAAP 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 may differ from estimates.

Recent accounting pronouncements

In May 2014, the FASB issued new revenue recognition guidance, which will supersede nearly all existing revenue recognition guidance. The core principle of the guidance is that an entity should recognize revenue when it transfers promised goods or services to customers in an amount that reflects the consideration to which the entity expects to be entitled in exchange for those goods or services. To achieve the core principle, the new guidance implements a five-step process for customer contract revenue recognition. The guidance also requires enhanced disclosures regarding the nature, amount, timing and uncertainty of revenues and cash flows arising from contracts with customers. The new guidance is effective for annual reporting periods beginning after December 15, 2017, including interim periods within that reporting period. Entities can transition to the new guidance either retrospectively or as a cumulative-effect adjustment as of the date of adoption.

The Company currently anticipates adopting this accounting standard during the first quarter of 2018, with a cumulative effect adjustment as of the date of adoption. Although we are still evaluating the full impact of this standard on our consolidated financial statements, the Company has concluded that the adoption of this standard will affect how we account for our customer loyalty program as well as the classification of revenues between gaming, food and beverage, lodging, and retail, entertainment and other. Under our customer loyalty program, customers earn points based on their level of play, which may be redeemed for various benefits, such as cash back or dining, among others. We currently determine our liability for unredeemed points based on the estimated costs of services or merchandise to be provided and estimated redemption rates. Under the new standard, points awarded under our customer loyalty program are considered a material right given to the players based on their gaming play and the promise to provide points to players will need to be accounted for as a separate performance obligation. The new standard will require us to allocate the revenues associated with the players' activity between gaming revenue and the value of the points and to measure the liability based on the estimated standalone value of the points earned after factoring in the likelihood of redemption. As a result, we expect that gaming revenues will be reduced with a corresponding increase, in total, of food and beverage, lodging, and retail, entertainment and other revenues. The revenue associated with the points earned will be recognized in the period in which they are redeemed. The quantitative effects of these changes have not yet been determined and are still being analyzed.

In February 2016, FASB issued ASU 2016-02, Leases (Topic 842) ("ASU 2016-02"), which provides guidance for accounting for leases. Under ASU 2016-02, the Company will be required to recognize the assets and liabilities for the rights and obligations created by leased assets. ASU 2016-02 will take effect for public companies for fiscal years, and interim periods within those fiscal years, beginning after December 15, 2018. The standard must be adopted using a modified retrospective approach and provides for certain practical expedients. Early adoption is permitted. The Company has not yet completed its assessment of the impact of the new standard on the Company's consolidated financial statements. The Company currently anticipates adopting this standard during the first quarter of 2019.

In March 2016, FASB issued ASU 2016-09, Compensation-Stock Compensation (Topic 718): Improvements to Employee Share-Based Payment Accounting ("ASU 2016-09"), which provides guidance for accounting for stock-based compensation for employees. Under ASU 2016-09, several aspects of the accounting for share-based payment award transactions are simplified, including the income tax consequences, classification of awards as either equity or liabilities, and classification on the statement of cash flows. ASU 2016-09 will take effect for public companies for fiscal years, and interim periods within those

fiscal years, beginning after December 15, 2016. Early adoption is permitted. The Company currently anticipates adopting this standard during the first quarter of 2017 and does not anticipate a material impact from this guidance.

Note C. Prepaid Expenses and Other Assets

The Company has participated in the New York State Empire Zones real estate tax credit program for over 10 years. Under this program, the Company receives a refund for real estate taxes paid during the year, after the end of New York State's fiscal year. Beginning in 2014, the amount of the tax credit received is reduced by 20% each year until the tax credit ends for the Company at December 31, 2017. For the year ended December 31, 2016, the Company will receive a 40% refund for real estate taxes paid. The amounts of the unreceived real estate tax credits are included in prepaid expenses and other current assets on the accompanying consolidated balance sheet at December 31, 2016 and 2015, and were approximately $1.3 million and $1.9 million, respectively.

Prepaid expenses and other current assets, as presented on the balance sheet are comprised of the following at December 31, 2016 and 2015:

	12/31/2016	12/31/2015
	(in thousands)	
Empire zone real estate tax credit	$ 1,325	$ 1,945
Prepaid real estate taxes	558	548
Prepaid insurance	919	236
Prepaid rent payment	—	500
Inventory	177	207
Prepaid gaming expenses	61	46
Development escrow & security refundable deposit	623	911
Prepaid other	672	448
Total prepaid expenses and other current assets	$ 4,335	$ 4,841

Note D. Property and Equipment, Capitalized Project Development Costs and Cash for Development Projects

Property and equipment at December 31, 2016 and 2015 consists of:

	12/31/2016	12/31/2015
	(in thousands)	
Land	$ 770	$ 770
Land improvements	1,758	1,732
Buildings	4,727	4,727
Building improvements	28,088	27,284
Vehicles	307	280
Furniture, fixtures and equipment	4,278	3,894
Construction in Progress	919	197
	40,847	38,884
Less—Accumulated depreciation	(14,432)	(13,095)
	$ 26,415	$ 25,789

Depreciation expense was approximately $1.3 million, $1.4 million and $1.3 million for years ended December 31, 2016, 2015 and 2014, respectively.

The VGMs in the Company's facility are owned by the NYSGC and, accordingly, the Company's consolidated financial statements include neither the cost nor the depreciation of those devices.

Capitalized Project Development Costs

Once it was awarded the Gaming Facility License on December 21, 2015, the Company began capitalizing certain Project Development expenditures during the fourth quarter of 2015. At December 31, 2016 and 2015, total Capitalized Project Development costs incurred were approximately $202.4 million and $10.4 million, respectively. Total Capitalized Project Development costs at December 31, 2016 consisted of $198.9 million of construction costs, site development, contractor insurance, general conditions, architectural fees, construction manager fees, and approximately $3.5 million of professional service fees such legal and accounting fees and is reflected on the balance sheet as Capitalized Development Project costs. Total Capitalized Development Project costs at December 31, 2015 consisted of $10.3 million in architectural, engineering fees, construction manager and subcontractor costs, site development costs and approximately $127,000 in legal fees, accounting fees, consultants and other costs.

Cash Collateral for Deposit Bond

In February 2016, the Company deposited $15 million in performance bonds to guarantee the completion of the Development Projects. These funds will be returned to the Company upon the satisfactory completion of the Development Projects.

Cash for Development Projects

At December 31, 2016, the $26.4 million in Cash for Development Projects on the Consolidated Balance Sheet represents the remaining portion from the January 2016 Rights Offering to be utilized for the Casino Project, Golf Course, and Entertainment Village. At December 31, 2015, the $15.5 million of Cash for Development Projects on the Consolidated Balance Sheet represents the remaining funds from the January 2015 Rights Offering to be utilized for the Casino Project.

Note E. Development Projects Costs

In 2016, total Development Projects costs incurred were approximately $205.0 million, of which $192.0 million was capitalized and $13.0 million was expensed. Development Project expenses consisted of $10.4 million of land lease costs, $400,000 of real estate taxes, $482,000 of insurance expense, $324,000 in consultants and other professional service fees, $164,000 in legal fees and $1.2 million of pre-opening expenses, including salary and related benefits, as well as marketing expenses.

In 2015, total Development Projects costs incurred were approximately $42.9 million, of which $32.5 million was expensed and consisted of $2.7 million in legal fees, consultants and other professional service fees, $4.6 million of non-refundable payments pertaining the Option Agreement with EPR, $24.2 million in architectural, engineering fees, construction manager costs and subcontractor costs, and a $975,000 payment to Kien Huat for a commitment fee pursuant to the Second amendment to the Commitment Letter. The $42.9 million includes $10.4 million of capitalized project development costs during 2015.

In 2014, the Development Projects costs incurred were approximately $12.2 million and consisted of $5.1 million in legal fees, construction manager costs, consultants and other professional service fees, $3.1 million of non-refundable payments pertaining to the Option Agreement with EPR, $2.1 million in architectural fees, $1.0 million payment for the RFA application fee, and a $900,000 payment to Kien Huat for a commitment fee pursuant to the Commitment Letter.

Note F. Accrued Expenses and Other Current Liabilities

Accrued Development Projects costs at December 31, 2016 and 2015 were $41.9 million and $10.8 million, respectively, and were primarily comprised of amounts due to the Construction Manager for costs incurred for the Development Projects, as well as amounts due to the architect and other vendors.

Accrued expenses and other current liabilities, as presented on the balance sheet are comprised of the following at December 31, 2016 and 2015:

	12/31/2016	12/31/2015
	(in thousands)	
Liability for horseracing purses	$ 1,139	$ 529
Accrued payroll	1,897	1,719
Series E Preferred Stock payable	—	1,500
Accrued redeemable points	167	67
Liability to NYSGC	360	1,012
Liability for local progressive jackpot	907	927
Accrued settlement liability	758	—
Accrued professional fees	308	844
Federal tax withholding payable	78	154
Accrued other	1,733	1,664
Total accrued expenses and other current liabilities	$ 7,347	$ 8,416

Note G. Long-Term Loans, Related Party

Conversion of Kien Huat Note

On November 17, 2010, Empire entered into a loan agreement (the "2010 Kien Huat Loan Agreement") with Kien Huat Realty III Limited ("Kien Huat") pursuant to which Empire issued a convertible promissory note (the "2010 Kien Huat Note") in the original principal amount of $35 million, of which $17.4 million was outstanding as of December 31, 2015. On February 17, 2016, upon consummation of the January 2016 Rights Offering, the 2010 Kien Huat Note was converted into 1,332,058 shares of common stock (the "Note Conversion") in accordance with the terms of the 2010 Kien Huat Loan Agreement.

The Company recognized approximately $178,000, $1.3 million and $1.3 million in interest expense associated with the 2010 Kien Huat Note during the years ended December 31, 2016, 2015 and 2014, respectively.

Kien Huat Construction Loan Agreement

On October 13, 2016, Montreign Operating and Kien Huat entered into a loan agreement (the "KH Construction Loan Agreement"). Pursuant to the KH Construction Loan Agreement, Kien Huat agreed to make available to Montreign Operating up to an aggregate of $50 million of loans to pay the expenses of the Casino Project while the debt financing for the Development Projects was being finalized. The term of the KH Construction Loan Agreement would expire on the earlier of (i) the consummation of financing in an amount no less than the remaining contract amount under the Casino Project construction contract and (ii) October 13, 2017. In connection with the closing of the Term Loan Facility and the Kien Huat Montreign Loan, on January 24, 2017, the KH Construction Loan Agreement expired pursuant to its terms without being utilized by Montreign Operating. Montreign paid Kien Huat a commitment fee of $500,000 upon execution of the KH Construction Loan. The commitment fee was capitalized and is included in Other Assets. It is being amortized over the life of the agreement.

Note H. Bryanston Settlement Agreement

Effective as of June 30, 2013 (the "Closing Date"), the Company, Kien Huat, Colin Au Fook Yew ("Au") and Joseph D'Amato ("D'Amato" and, together with the Company, Kien Huat and Au, the "Company Parties") consummated the closing of a Settlement Agreement and Release (as amended, the "Settlement Agreement") with Stanley Stephen Tollman ("Tollman") and Bryanston Group, Inc. ("Bryanston Group" and, together with Tollman, the "Bryanston Parties"). Pursuant to the Settlement Agreement, the Company Parties and the Bryanston Parties agreed to the settlement of certain claims relating to shares of Series E Preferred Stock held by the Bryanston Parties and that certain Recapitalization Agreement, dated December 10, 2002, by and between, among others, the Bryanston Parties and a predecessor to the Company (the "Recapitalization Agreement"), pursuant to which the Bryanston Parties acquired the Series E Preferred Stock. On the Closing Date, the Recapitalization Agreement terminated and ceased to have any further force and effect as between the Bryanston Parties and the Company.

Pursuant to the Settlement Agreement, and because the Bryanston Group shares were not redeemed before December 31, 2014, the annual dividend for calendar year 2014 was paid to the Bryanston Group in the amount of approximately $1.2 million on February 12, 2015 from funds legally available to the Company to effect such payment.

As a result of the Settlement Agreement on June 30, 2013, and pursuant to ASC 480, the Series E Preferred Stock became contractually redeemable subject to the terms and conditions of the Settlement Agreement and has been classified as a liability on the accompanying December 31, 2015 balance sheet. The amount of the liability recorded on the balance sheet is the amount at which it would be settled if the redemption occurred as of the balance sheet date. The difference between the redemption amount and the amount recorded in the balance sheet as of the date of the Settlement Agreement has been reflected as a deemed dividend on that date. Changes in the redemption value of the liability subsequent to the date of the Settlement Agreement are recorded as interest expense.

On March 7, 2016, the Company redeemed the outstanding Series E Preferred Stock held by the Bryanston Group for approximately $30.7 million pursuant to the terms of the Settlement Agreement. Because the event that caused the entire liability to become due occurred during 2016, the liability was recorded pursuant to the payment terms in place at December 31, 2015 of which $1.5 million was recorded as a current liability and the remainder as a long term liability on the accompanying balance sheet.

Interest expense associated with the change in the redemption amount of the liability was $231,000, $1.2 million and $7.7 million for the years ended December 31, 2016, 2015 and 2014, respectively.

Note I. Stockholders' Equity

Authorized Capital

On November 1, 2016, Empire filed the Second Amended and Restated Certificate of Incorporation (the "Restated Charter") with the Secretary of State of the State of Delaware. Pursuant to Restated Charter, Empire's authorized capital stock consists of 155 million shares, of which 150 million shares are common stock and five million shares are preferred stock.

Common Stock

Our common stock is transferable only subject to the provisions of Section 303 of the Racing, Pari-Mutuel Wagering and Breeding Law, so long as we hold directly or indirectly, a license issued by the NYSGC, and may be subject to compliance with the requirements of other laws pertaining to licenses held directly or indirectly by us. The owners of common stock issued by us may be required by regulatory authorities to possess certain qualifications and may be required to dispose of their common stock if the owner does not possess such qualifications.

January 2016 Rights Offering

On January 4, 2016, we commenced a rights offering (the "January 2016 Rights Offering") of transferable subscription rights to holders of record of our common stock and Series B Preferred Stock as of January 4, 2016 to purchase up to 20,138,888 shares of our common stock. The subscription rights were listed for trading on The Nasdaq Stock Market under the symbol "NYNYR" for the duration of the January 2016 Rights Offering. In connection with the January 2016 Rights Offering, on December 31, 2015, the Company and Kien Huat entered into a standby purchase agreement (the "January 2016 Standby Purchase Agreement"). Pursuant to the January 2016 Standby Purchase Agreement, Kien Huat agreed to (i) exercise its basic subscription rights to acquire approximately $30 million of our common stock within 10 days of the commencement of the January 2016 Rights Offering with a closing proximate thereto and (ii) to exercise the remainder of its basic subscription rights prior to the expiration date of the January 2016 Rights Offering. In addition, Kien Huat agreed it would exercise all rights not otherwise exercised by the other holders in the January 2016 Rights Offering in an aggregate amount not to exceed $290 million.

The January 2016 Rights Offering closed on February 17, 2016. The Company issued a total of 20,138,888 shares of common stock for aggregate gross proceeds of approximately $290 million. This includes 176,086 shares issued to holders upon exercise of their basic subscription and over-subscription rights and 13,136,817 shares issued to Kien Huat upon exercise of its basic subscription rights. Kien Huat also acquired the remaining 6,825,985 shares not sold in the January 2016 Rights Offering pursuant to the January 2016 Standby Purchase Agreement. The net proceeds of the January 2016 Rights Offering were approximately $286.0 million following the deduction of expenses, which were used (i) to pay the expenses relating to the construction of the Casino Project, (ii) to redeem the outstanding shares of the Series E Preferred Stock in accordance with the terms of the Settlement Agreement on March 7, 2016 and (iii) for the working capital needs of the Company. Pursuant to the January 2016 Standby Purchase Agreement, we paid Kien Huat a commitment fee of $1,450,000, which is equal to 0.5% of the maximum amount of the January 2016 Rights Offering, and reimbursed Kien Huat for expenses in the amount of $50,000.

January 2015 Rights Offering

On January 5, 2015, the Company commenced a rights offering (the "January 2015 Rights Offering") of non-transferable subscription rights to holders of record of our common stock and Series B Preferred Stock as of January 2, 2015 to purchase up to 1,408,451 shares of our common stock. In connection with the January 2015 Rights Offering, on January 2, 2015, the Company and Kien Huat entered into a standby purchase agreement (the "January 2015 Standby Purchase Agreement").Pursuant to the January 2015 Standby Purchase Agreement, Kien Huat agreed to exercise in full its basic subscription rights granted in the January 2015 Rights Offering within 10 days of its grant. In addition, Kien Huat agreed it would exercise all rights not otherwise exercised by the other

holders in the January 2015 Rights Offering in an aggregate amount not to exceed $50 million.

The January 2015 Rights Offering closed on February 6, 2015. The Company issued a total of 1,408,451 shares of common stock for aggregate gross proceeds of approximately $50 million. This includes 10,658 shares issued to holders upon exercise of their basic subscription rights and over-subscription rights and 864,360 shares issued to Kien Huat upon exercise of its basic subscription rights. Kien Huat also acquired the remaining 533,433 shares not sold in the January 2015 Rights Offering pursuant to the terms of the January 2015 Standby Purchase Agreement. The net proceeds of the January 2015 Rights Offering were approximately $49.5 million following the deduction of expenses, which were used to pay the expenses of the Casino Project. Pursuant to the January 2015 Standby Purchase Agreement, we paid Kien Huat a commitment fee of $250,000, which is equal to 0.5% of the maximum amount of the January 2015 Rights Offering and reimbursed Kien Huat for expenses in the amount of $40,000.

April 2014 Rights Offering

On April 2, 2014, the Company commenced a rights offering of common stock to holders of its common stock and Series B Preferred Stock as of March 31, 2014 (the "April 2014 Rights Offering"). Upon completion of the April 2014 Rights Offering, the Company issued 427,776 shares of common stock and raised approximately $13.4 million. This includes 90,633 shares issued to holders upon exercise of their basic subscription rights, 302,526 shares issued to Kien Huat upon exercise of its basic subscription rights and 34,617 shares issued to holders upon exercise of their over-subscription rights in the April 2014 Rights Offering.

Preferred Stock and Dividends

The Company's Series B Preferred Stock has voting rights of 0.054 votes per share and each share is convertible into 0.054 shares of common stock. It has a liquidation value of $29 per share and is entitled to annual cumulative dividends of $2.90 per share payable quarterly in cash. The Company has the right to pay the dividends on an annual basis by issuing shares of its common stock at the rate of $3.77 per share. The value of common shares issued as payment is based upon the average closing price for the common shares for the 20 trading days preceding January 30 of the year following that for which the dividends are due. At December 31, 2016 and 2015, there were 44,258 shares of Series B Preferred Shares outstanding.

The Board authorized the cash payment of the Series B Preferred Stock quarterly dividends for calendar year 2016. Payments in the amount of $32,087 were made on April 1, 2016, July 1, 2016, October 3, 2016 and January 3, 2017.

On March 2, 2016, our Board authorized the cash payment of dividends due for the year ended December 31, 2015 on our Series B Preferred Stock in the amount of approximately $167,000. At December 31, 2015, the Company had undeclared cash dividends on the Series B Preferred Stock of approximately $167,000 and payment was made the same day. The cash dividend was calculated as if it were a dividend issued in shares of our comment stock, which in accordance with the terms of the Series B Preferred stock, means the amount of the cash payment is the annual cash dividend value (if it had been paid quarterly) multiplied by 1.3.

On February 9, 2015, our Board authorized the issuance of 5,102 shares of our common stock in payment of dividends due for the year ended December 31, 2014 on our Series B Preferred Stock. The recorded value of these shares was approximately $159,000. At December 31, 2014, the Company had undeclared dividends on the Series B Preferred Stock of approximately $159,000.

On February 19, 2014, our Board authorized the issuance of 6,167 shares of our common stock in payment of dividends due for the year ended December 31, 2013 on our Series B Preferred Stock. The recorded value of these shares was approximately $218,000. At December 31, 2013, the Company had undeclared dividends on the Series B Preferred Stock of approximately $218,000.

The Company's Series E Preferred Stock was non-convertible and, except as set forth in Note H, had no fixed date for redemption or liquidation. It had a redemption value of $10 per share plus accrued but unpaid dividends. It was entitled to cumulative dividends at the annual rate of 8% of redemption value and the holders of these shares are entitled to voting rights of 0.25 per share. Dividends on common stock and certain other uses of the Company's cash were subject to restrictions for the benefit of holders of the Series E Preferred Stock.

Kien Huat Letter Agreement

As a result of Kien Huat's increased proportionate ownership following the consummation of the January 2016 Rights Offering and the Note Conversion, at the request of the Company, on February 17, 2016, Kien Huat and the Company entered into a letter agreement (the "Kien Huat Letter Agreement") pursuant to which, during the period commencing on February 17, 2016 and ending on the earlier of (i) the three-year anniversary of the closing of the January 2016 Rights Offering and (ii) the one-year anniversary of the opening of the Casino Project, Kien Huat has agreed not to take certain actions with respect to the Company. In particular, during such time period, Kien Huat has agreed not to, and to cause the Kien Huat Parties not to, take certain actions in furtherance of a "going-private" transaction (as such term is defined in the Kien Huat Letter Agreement) involving the Company unless such transaction is subject to the approval of (x) holders of a majority of the votes represented by the common stock, Series B Preferred Stock and any other capital stock of the Company entitled to vote together with the common stock in the election of the Board (other than any such capital stock owned by any Kien Huat Parties) and (x) either (A) a majority of disinterested members of the Board or (y) a committee of the Board composed of disinterested members of the Board. In addition, during such period, the Company and Kien Huat have agreed to cooperate to ensure that, to the greatest extent possible, the Board includes no fewer than three independent directors (the definition of independence as determined

under the standards of The Nasdaq Stock Market or any other securities exchange on which the common stock of the Company is then listed).

Note J. Option Matching Rights, Warrants and Options

Option Matching Rights

On August 19, 2009, the Company entered into an investment agreement (the "Investment Agreement") with Kien Huat, pursuant to which Kien Huat purchased shares of common stock of the Company during the year ended December 31, 2009. Under the Investment Agreement, if any options or warrants outstanding at the time of the final closing under the Investment Agreement, or the first 200,000 granted to directors or officers as of the final closing date under the Investment Agreement, are exercised, Kien Huat has the right to purchase an equal number of additional shares of common stock as are issued upon such exercise at the exercise price for the applicable option or warrant. The Company refers to these rights as the “Option Matching Rights”.

Pursuant to the terms of the Investment Agreement, the Company is required to provide notice (an “Option Exercise Notice”) of any exercise within five business days, after which notice is received, Kien Huat is required to notify the Company of whether it decides to exercise such Option Matching Rights within ten business days. The Company did not provide such notice to Kien Huat pursuant to the Investment Agreement. On December 31, 2015, the Company and Kien Huat entered into a letter agreement (the “OMR Letter Agreement”) pursuant to which the parties agreed that, as a result of the Company’s failure to provide the Option Exercise Notice, Kien Huat’s right to elect to purchase an equal number of shares had not yet vested and would inure to Kien Huat’s benefit only upon the Company’s delivery of such Option Exercise Notice. To fulfill the Company’s obligations pursuant to the Investment Agreement pursuant to the OMR Letter Agreement, the Company provided the Option Exercise Notice as of December 31, 2015 for approximately 204,706 shares of common stock as required by the Investment Agreement. Kien Huat shall have ten business days following the date on which the Company’s Chief Compliance Officer provides written notice that Kien Huat is no longer unable to exercise the Option Matching Rights pursuant to the Company’s Insider Trading Policy (the “Effective Date Notice”) to elect whether to exercise such Option Matching Rights.

On February 17, 2016, the Company provided the Effective Date Notice to Kien Huat regarding Kien Huat's election to exercise its Option Matching Rights. On February 17, 2016, Kien Huat declined to exercise the Option Matching Rights to purchase 204,706 shares of common stock. At December 31, 2016, there were approximately 21,000 Option Matching Rights outstanding with various exercise prices and expiration dates through July 2018.

Warrants

During 2015, the Company issued an aggregate of 83,334 shares of common stock at $30.00 per share from the exercise of warrants from a warrant holder. The Company received proceeds of $2.5 million from the exercise of these warrants.

As of December 31, 2016, there are outstanding warrants to purchase an aggregate of approximately 133,300 shares of Empire’s common stock at $30.00 per share with an expiration date of May 10, 2020.

Options

Second Amended and Restated 2005 Equity Incentive Plan

In May 2015, the Company's Second Amended and Restated 2005 Equity Incentive Plan (the “2005 Equity Incentive Plan”) expired. Options to purchase approximately 33,600 shares of common stock were outstanding as of December 31, 2016 under the 2005 Equity Incentive Plan. Although the 2005 Equity Incentive Plan expired, the approximately 33,600 options still outstanding under such plan are still exercisable.

2015 Equity Incentive Plan

In September 2015, our Board approved, and in November 2015, our stockholders approved the Company's 2015 Equity Incentive Plan (the "2015 Equity Incentive Plan"). The 2015 Equity Incentive Plan provided for an aggregate of 952,498 shares of common stock to be available for Awards. Subject to adjustments based on the terms of the 2015 Equity Incentive Plan, on the 90th day after the Company is awarded a Gaming Facility License (the “Trigger Date”), the maximum shares of Common stock available for Awards were to automatically increase by the lesser of: (i) 1,633,209 shares of common stock; (ii) such number of shares as would increase the aggregate number of shares of Common stock available for Awards equal to 10% of the issued and outstanding shares of Common stock as of the Trigger Date; and (iii) such number of shares of Common stock as the Compensation Committee would otherwise determines. On March 8, 2016, pursuant to the terms of the 2015 Equity Incentive Plan, the Board determined to increase the number of shares of common stock available for grant under such plan by 1,663,20

9 shares for a total amount of shares available for grants of 2,600,707. Such change was effective as of March 20, 2016. At December 31, 2016, a total of 2,501,309 shares were available for future issuance under the Plan.

Stock-based compensation expense was approximately $2.7 million, $596,000 and $636,000 for the years ended December 31, 2016, 2015 and 2014, respectively. As of December 31, 2016, there was approximately $2.4 million of total unrecognized compensation cost related to non-vested share-based compensation awards granted under the Company's plan. That cost is expected to be recognized over the remaining vesting period of 1.75 years. This expected cost does not include the impact of any future stock-based compensation awards.

In 2016, 2015 and 2014, the Company received approximately $163,000, $160,000 and $2.8 million, respectively, in proceeds from shares of common stock issued as a result of the exercise of stock options.

The following table sets forth the weighted average assumptions used in applying the Black Sholes option pricing model to the option grants in 2014. No options were granted in 2016 and 2015:

	2014
Weighted average fair value of options granted	$5.65
Expected dividend yield	—%
Expected volatility	101.6%
Risk-free interest rate	1.64%
Expected life of options	5 years

The following table reflects stock option activity in 2016, 2015 and 2014:

	Approximate number of shares	Range of exercise prices per share	Weighted average exercise price per share	Weighted average remaining contractual life (years)
Options outstanding at December 31, 2013	378,000	$7.95 - $131.10	$ 33.15	1.46
Granted in 2014	1,600	$ 35.85		3.87
Options exercised in 2014	(153,600)	$13.95 - $34.50		
Forfeited in 2014	(1,000)	$ 24.75		
Canceled in 2014	(68,800)	$15.00 - $213.75		
Options outstanding at December 31, 2014	156,200	$7.95 - $131.10	$ 33.25	1.47
Options exercised in 2015	(81,600)	$13.95-$27.15		
Forfeited in 2015	(18,000)	$13.95 -$127.95		
Options outstanding at December 31, 2015	56,600	$7.95 - $131.10	$ 48.50	2.61
Options exercised in 2016	(18,000)	$7.95-$9.90		
Forfeited in 2016	(5,000)	$14.85 -$82.95		
Options outstanding at December 31, 2016	33,600	$7.95 - $131.10	$ 68.92	1.11

Note K. Concentration

As of December 31, 2016, the Company had one debtor that consisted of greater than 10% of accounts receivable. Hawthorne OTB represented 16.9% of the total net outstanding racing- related accounts receivable.

As of December 31, 2015, the Company had one debtor that consisted of greater than 10% of accounts receivable. Hawthorne OTB represented 11.4% of the total net outstanding racing- related accounts receivable.

Note L. Employee Benefit Plans

Empire 401-k Plan

Our eligible employees may participate in a Company-sponsored 401(k) benefit plan (the "Plan"). The Company established the Plan to provide employees with the opportunity to accumulate pre-tax assets, and to provide employer contributions for eligible employees for their retirement and other needs. It is intended to be administered in accordance with all applicable federal laws and regulations. The Plan covers substantially all employees not otherwise covered by plans resulting from collective bargaining agreements. The Plan permits employees to defer a portion of their compensation as a pre-tax deferral up to statutory maximums. Effective May 2011, the Company made matching contributions for eligible, other than salaried, employees as follows: 100% matching contribution for an employee contribution of up to 3% of compensation, a matching contribution of 3% of compensation for an employee contribution of 3% to 3.99%, a matching contribution of 3.5% of compensation for an employee contribution of 4% to 4.99% and a matching contribution of 4% of compensation for an employee contribution of 5% or more. Effective July 2016, the Company now makes a matching contribution for eligible salaried employees as follows: 50% matching contribution for an employee contribution of up to 4% of compensation. Eligible employees shall be 100% vested in the portion of their accounts derived from the Company's matching contributions. Matching contributions for the years ended December 31, 2016, 2015 and 2014 were approximately $142,000, $96,000 and $92,000, respectively. As of December 31, 2016, the Plan had 179 participants.

Deferred Compensation Plan

The Company adopted a deferred compensation plan (the "Deferred Compensation Plan"), which is effective on January 1, 2017. The Deferred Compensation Plan is a non-qualified deferred compensation plan under which eligible participants may elect to defer the receipt of current compensation. Eligible participants include select employees of the Company, including its executive officers. Pursuant to the Deferred Compensation Plan and subject to applicable tax laws, participants may elect to defer up to 50% of their base salary and up to 100% of any cash bonus. In addition to elective deferrals, the Deferred Compensation Plan permits the Company to make discretionary contributions. Participants may elect to receive payment of their vested account balances in a single cash payment or in annual installments for a period of five, 10 or 15 years. Payments will be made or commence upon the earliest of a participant's separation from service, death or disability. If a participant so elects, payments will be deferred until a fixed and determinable date.

The obligations incurred by the Company under the Deferred Compensation Plan will be unsecured general obligations of the Company to pay the compensation deferred in accordance with the terms of the Deferred Compensation Plan and will rank equally with other unsecured and unsubordinated indebtedness of the Company. Because the Company has subsidiaries, the right of the Company, and hence the right of creditors of the Company (including eligible participants in the Deferred Compensation Plan), to participate in a distribution of the assets of a subsidiary upon its liquidation or reorganization or otherwise, necessarily is subject to the prior claims of creditors of the subsidiary, except to the extent that claims of the Company itself as a creditor may be recognized.

Note M. Income Taxes

Empire and all of its subsidiaries file a consolidated income tax return. At December 31, 2016 and 2015, the estimated deferred income tax assets and liability were comprised of the following:

	12/31/2016	12/31/2015
	(in thousands)	
Deferred tax assets:		
Net operating loss carryforwards	$ 57,327	$ 57,177
Stock—based compensation	2,863	6,706
Development costs	26,805	20,101
Other	1,939	2,108
Net deferred tax assets	88,934	86,092
Valuation allowance	(88,934)	(86,092)
Deferred tax assets, net	$ —	$ —

The valuation allowance increased approximately $2.8 million and $14.0 million during the years ended December 31, 2016 and 2015, respectively. Of the $146.5 million in net operating loss carryforwards approximately $66.4 million is readily available as of December 31, 2016.

There are limits on the Company's ability to use its current net operating loss carryforwards, potentially increasing the future tax liability of the Company if it were to generate taxable income. As of December 31, 2016, the Company had net operating loss carryforwards of approximately $146.5 million that expire between 2018 and 2036. The 2004 merger of the Company's operations with Catskills Development LLC and the investment by Kien Huat in 2009 will limit the amount usable in any year of its net operating losses due to the change in control of the Company within the meaning of the tax laws.

The following is a reconciliation of the federal statutory tax rate to the Company's effective tax rate:

	Year ended December 31,		
	2016	2015	2014
Tax provision at federal statutory tax rate	35.0 %	35.0 %	35.0 %
New York State income taxes, net	— %	(0.1)%	— %
Non-deductible interest	(0.3)%	(1.2)%	(11.3)%
Permanent items	(3.5)%	(2.5)%	1.8 %
Change in valuation allowance	(31.2)%	(31.4)%	(25.5)%
Effective tax rate	— %	(0.2)%	— %

As of December 31, 2016, the Company does not have any uncertain tax positions. As a result, there are no unrecognized tax benefits as of December 31, 2016. If the Company was to incur any interest and penalties in connection with income tax deficiencies, the Company would classify interest in the "interest expense" category and classify penalties in the "non-interest expense" category within the consolidated statements of operations.

The Company files tax returns in the U.S. federal jurisdiction and in various states. All of its federal and New York State tax filings as of December 31, 2015 have been timely filed. The Company is subject to U.S. federal or New York State income tax examinations by tax authorities for years after 2012. During the periods open to examination, the Company has net operating loss and tax credit carryforwards that have attributes from closed periods. Since these net operating loss and tax credit carryforwards may be utilized in future periods, they remain subject to examination.

Note N. Related Party Transactions

Moelis Agreements

On December 9, 2013, the Company executed a letter agreement (the "Moelis Letter Agreement") pursuant to which it engaged Moelis & Company LLC ("Moelis") to act as its financial advisor in connection with the Casino Project. Pursuant to the Moelis Letter Agreement, we agreed to pay Moelis a retainer fee in the aggregate amount of $250,000, of which $150,000 was payable upon execution and $100,000 of which was paid within 90 days after execution. In the event a financing is consummated, the Moelis Letter Agreement contemplates additional transaction-based fees would be earned by Moelis.

During 2014, we paid Moelis approximately $44,000 for professional services and travel.

During 2015, we paid Moelis approximately $428,000 for professional services, travel and expenses.

At the close of the January 2016 Rights Offering, Moelis was paid approximately $2.1 million for financial advisory services in connection with the Casino Project pursuant to the Moelis letter Agreement.

On January 24, 2017, in connection with the closing of the Term Loan Facility and the Revolving Credit Facility, Moelis was paid approximately $2.5 million for financial advisory services in connection with the Casino Project pursuant to the Moelis Letter Agreement.

In March 2017, Montreign Operating entered into an engagement agreement with Moelis (the "Moelis-Montreign Engagement Agreement") pursuant to which Moelis will act as exclusive financial advisor to Montreign Operating. Pursuant to the Moelis-Montreign Engagement Agreement, Moelis is entitled to an advisory fee of $100,000, which is payable upon execution, and the reimbursement of expenses up to $75,000. The Moelis-Montreign Engagement Agreement will automatically terminate on December 31, 2017 unless either party terminates earlier.

Gregg Polle, a director of the Company, is a Managing Director of Moelis. Mr. Polle refrained from participating in the discussion of the Moelis Letter Agreement and the Moelis-Montreign Engagement Agreement and the determination of whether to enter into such agreements.

Note O. Commitments and Contingencies

The Company is a party from time to time to various legal actions that arise in the normal course of business. In the opinion of management, the resolution of these other matters will not have a material and adverse effect on our consolidated financial position, results of operations or cash flows.

Operating leases

The following table represents the minimum lease payments:

	Payments due by Period
Year ending December 31,	**Total Lease Payments**
	(in thousands)
2017	$ 10,000
2018	10,550
2019	7,775
2020	7,800
2021	8,300
2022 to 2056	370,274
Total	$ 414,699

The details of lease commitments are described below.

Casino Lease

On December 28, 2015 , Montreign Operating entered into a lease (the "Casino Lease") with EPT for the lease of the parcel on which the Casino Project is being built (the "Casino Parcel'). The Casino Lease has a term that expires on the earlier of (i) March 31, 2086, and (ii) Montreign Operating giving EPT written notice of its election to terminate the Casino Lease (the “Termination Option”) at least 12 months prior to any one of five Option Dates (as defined below). The option dates (each an "Option Date") under the Casino Lease mean each of the 20th, 30th, 40th, 50th and 60th anniversaries of the commencement of the Casino Lease. Upon Montreign Operating's timely notice of exercise of its Termination Option, the Casino Lease shall be automatically terminated effective as of the applicable Option Date.

The following table represents the fixed rent payments under the Casino Lease:

Year ending December 31,	Fixed Rent Payments due by Period
	(in thousands)
2017 (1) (2)	$10,000
2018 (2) (3)	10,500
2019 (3)	7,500
2020 (3)	7,500
2021 (3)	8,000
2022 to 2056 (3)	354,624

(1) Until February 29, 2016, the Company continued to make payments of $500,000 per month it would have made under the Original Option Agreement. From March 1, 2016 until February 28, 2017, option payments made by the Company under the Original Option Agreement, which totaled $8.5 million, were applied against fixed rent due by the Company under the Casino Lease for such period.

(2) From March 1, 2017 through August 31, 2018, fixed rent will be $1 million per month.

(3) From September 1, 2018 through the remainder of the term of the Casino Lease, fixed rent shall equal $7.5 million per year, subject to an eight percent escalation every five years ("Base Amount").

In addition to the annual fixed rent, beginning September 2018 and through the remainder of the term of the Casino Lease (the “Percentage Rent Period”), Montreign Operating is obligated to pay an annual percentage rent equal to five percent of the Eligible Gaming Revenue (as such term is defined in the Casino Lease) in excess of the Base Amount for the Percentage Rent Period. Additionally, the lease is a net lease, and Montreign Operating has an obligation to pay the rent payable under the Casino Lease and other costs related to Montreign Operating's use and operation of the Casino Parcel, including the special district tax assessments allocated to the Casino Parcel, not to exceed the capped dollar amount applicable to the Casino Parcel.

Golf Course Lease

On December 28, 2015, ERREI entered into a sublease (the “Golf Course Lease”) with the Adelaar Developer, LLC (the "Destination Resort Developer") for the lease of the Golf Course Parcel. The terms of the Golf Course Lease are substantially similar to the Casino Lease, subject to the material differences described below. Under the Golf Course Lease, there is no percentage rent due. Fixed rent payments under the Golf Course Lease are represented in the table below:

Year ending December 31,	Fixed Rent Payments due by Period
	(in thousands)
2017 (1)(2)	$0
2018 (2)	0
2019 (2)	125
2020 (2)	150
2021 (2)	150
2022 to 2056 (2) (3)	7,825

(1) From the date the Golf Course Lease commenced (the “Golf Course Lease Commencement Date”) and until the date on which the Golf Course opens for business, which is expected to be in Spring 2018 (the “Golf Course Opening Date”), fixed rent payments shall equal $0.
(2) From the Golf Course Opening Date and continuing for the 10 years thereafter, fixed rent shall equal $150,000 per year.
(3) From March 2029 through the remainder of the term of the Golf Course Lease, fixed rent shall equal $250,000 per year.

The Golf Course Lease is a net lease and ERREI is obligated to pay the rent payable under the Golf Course Lease and other costs related to ERREI's use and operation of the Golf Course Parcel, including the special district tax assessments allocated to the Golf Course Parcel, not to exceed the capped dollar amount applicable to the Golf Course Parcel. This obligation shall not be assessed against ERREI prior to 60 months following the Golf Course Lease Commencement Date.

Entertainment Village Lease

On December 28, 2015, ERREII entered into a sublease (the “Entertainment Village Lease”) with the Destination Resort Developer, for the lease of the Entertainment Village Parcel. The terms of the Entertainment Village Lease are substantially similar to the Casino Lease, subject to the material differences described below. Under the Entertainment Village Lease, there is no percentage rent due. Fixed rent payments under the Entertainment Village Lease are represented in the table below:

Year ending December 31,	Fixed Rent Payments due by Period
	(in thousands)
2017 (1)(2)	$0
2018 (2)	50
2019 (2)	150
2020 (2)	150
2021 (2)	150
2022 to 2056 (2) (3)	7,825

(1) From the date the Entertainment Village Lease commenced (the "Entertainment Village Lease Commencement Date") and until the date on which the Entertainment Village opens for business, which is expected to be September 2018 (the "Entertainment Village Opening Date"), fixed rent payments shall equal $0.
(2) From the Entertainment Village Opening Date and continuing for the 10 years thereafter, fixed rent shall equal $150,000 per year.
(3) From September 2028 through the remainder of the term of the Entertainment Village Lease, fixed rent shall equal $250,000 per year.

The Entertainment Village Lease is a net lease and ERREII is obligated to pay the rent payable under the Entertainment Village Lease and other costs related to ERREII's use and operation of the Entertainment Village Parcel, including the special district tax assessments allocated to the Entertainment Village Parcel, not to exceed the capped dollar amount applicable to the Entertainment Village Parcel. This obligation shall not be assessed against ERREII prior to 60 months following the Entertainment Village Lease Commencement Date.

Purchase Option Agreement

On December 28, 2015, Montreign Operating and EPR entered into a Purchase Option Agreement (the "Purchase Option Agreement"), pursuant to which EPR granted to Montreign Operating the option (the "Purchase Option") to purchase all, but not fewer than all, of the Development Project Parcels for a purchase price of $175 million, ($200 million after the sixth anniversary of the License Award Effective Date), less a credit of up to $25 million for certain previous payments made by the Project Parties. The Purchase Option commenced on December 28, 2015 and shall expire on the earlier to occur of (i) the natural expiration of the term of the Casino Lease and (ii) 90 days following the earlier termination of the Casino Lease, if otherwise terminated in accordance with its terms (the "Purchase Option Period").

Under the Purchase Option Agreement, EPR also granted to Montreign Operating the option (the "Resort Project Purchase Option") to purchase not less than all of the balance of the EPR Property, excluding the Development Project Parcels and the Waterpark (the "Resort Property") for an additional fee. The Resort Project Purchase Option may be exercised only simultaneously with or after the exercise of the Purchase Option. The Resort Project Purchase Option commenced on December 28, 2015 and shall expire on the earlier to occur of (a) the expiration of the Purchase Option Period or (b) March 1, 2026.

Under the Purchase Option Agreement, EPR also granted to Montreign a right of first offer ("ROFO") with respect to all or any portion of the Resort Property. Under the terms of the ROFO, if EPR makes an offer to or rejects an offer made by Montreign Operating, then EPR shall be precluded for a period of six months from transferring the designated portion of the Resort Property at a price and on terms which are on the whole substantially equivalent to or worse than those proposed or accepted by Montreign Operating. The ROFO commenced on the Effective Date and shall continue in full force and effect until EPR has sold, leased, licensed or otherwise transferred all of the Resort Property.

Note P. Loss Per Share

As previously discussed in Note H, the Company completed a rights offering during January 2016. As per ASC 260-10-55-13 to ASC 260-10-55-14, a rights issue in which the exercise price at issuance is less than the fair value of the stock contains a bonus element that is somewhat similar to a stock dividend. If a rights issue contains a bonus element and the rights issue is offered to all existing shareholders, basic and diluted earnings per share shall be adjusted retroactively for the bonus element for all periods presented. Since the Company offered the right to all existing shareholders at a 20% discount, a bonus element was present. The Company determined the bonus element to be an additional 1.458 million shares which would be added to the denominator that was used in computing basic and diluted earnings per share in 2015 and 2014. The calculation of the bonus element gave rise to the following adjustments to the weighted average number of common shares and loss per common share for the years ended December 31, 2015 and 2014:

	Year ended December 31,	
	2015	2014
	(in thousands, except per share)	
Weighted average number of common shares, as reported	9,291	7,828
Adjustment	1,458	1,458
Weighted average number of common shares, as adjusted	10,749	9,286
Loss per common share, as reported	$ (4.00)	$ (3.08)
Adjustment	$ (0.58)	$ (0.48)
Loss per common shares, as adjusted	$ (3.42)	$ (2.60)

Note Q. Summarized Quarterly Data (Unaudited)

The following table summarizes the quarterly results of operations for the years ended December 31, 2016 and 2015:

	Fiscal Quarter			
	Quarter 1	**Quarter 2**	**Quarter 3**	**Quarter 4**
2016	**(in thousands, expect per share data)**			
Net revenues	$ 16,205	$ 17,405	$ 18,530	$ 15,314
Loss from operations	(4,764)	(7,047)	(5,388)	(6,484)
Net loss	(5,177)	(7,045)	(5,388)	(6,587)
Loss per common share:				
Loss per common share, basic	$ (0.26)	$ (0.23)	$ (0.18)	$ (0.19)
Loss per common share, diluted	$ (0.26)	$ (0.23)	$ (0.18)	$ (0.19)
2015				
Net revenues	$ 14,525	$ 17,852	$ 19,512	$ 16,277
Loss from operations	(3,359)	(7,000)	(12,486)	(11,115)
Net loss	(4,047)	(7,650)	(13,139)	(11,774)
Loss per common share:				
Loss per common share, basic	$ (0.45)	$ (0.80)	$ (1.40)	$ (0.77)
Loss per common share, diluted	$ (0.45)	$ (0.80)	$ (1.40)	$ (0.77)

Note R. Subsequent Events

Corporate Restructuring

In January 2017, the Company undertook certain corporate restructuring. In particular, Empire created Montreign Holding Company, LLC ("Montreign Holding"), a wholly-owned subsidiary, to which it contributed all of its membership interests in Montreign Operating, which was formerly a wholly-owned subsidiary of Empire. Concurrently therewith, Empire contributed to Montreign Operating all of its membership interests in each of Empire Resorts Real Estate I, LLC ("ERREI"), which is developing the Golf Course Project, and Empire Resorts Real Estate II, LLC ("ERREII" and, together with ERREI, the "Montreign Subsidiaries" and, together with ERREI and Montreign Operating, the "Project Parties"), which is developing the Entertainment Village Project, each of which were formerly wholly-owned subsidiaries of Empire.

Term Loan Agreement and Revolving Credit Agreement

Term Loan Agreement

On January 24, 2017 (the "Loan Closing Date"), Montreign Operating entered into a Building Term Loan Agreement (the "Term Loan Agreement"), among Montreign Operating, the lenders from time to time party thereto, and Credit Suisse AG, Cayman Islands Branch ("Credit Suisse"), as administrative agent. The Term Loan Agreement provides for loans to be made to Montreign Operating in an aggregate principal amount of $485 million (the "Term Loan Facility").

The Term Loan Facility consists of $70 million of Term A loan (the "Term A Loan") and $415 million of Term B loans (the "Term B Loan"). The Term B Loan was borrowed in full on the Loan Closing Date and the proceeds were used to pay fees and expenses related to the financing and fund various lender-controlled accounts. The proceeds of the Term Loan Facility (including proceeds of the Term A Loan, which will be deposited into the lender-controlled accounts upon borrowing) will be made available to Montreign Operating, subject to Montreign Operating satisfying the disbursement conditions set forth in the Term Loan Agreement and related loan documents, to pay debt service and costs relating to the development and construction of the Development Projects.

The Term A Loan may be borrowed during the period from the Loan Closing Date to July 24, 2018, subject to meeting the conditions set forth in the Term Loan Agreement at the time of the borrowing. The Term A Loan will mature on January 24, 2022 and the Term B Loan will mature on January 24, 2023. Interest will accrue on outstanding borrowings under the Term A Loan at a rate equal to LIBOR plus 5.0% per annum, or an alternate base rate plus 4.0% per annum. Interest will accrue on outstanding borrowings under the Term B Loan at a rate equal to LIBOR (with a LIBOR floor of 1%) plus 8.25% per annum , or an alternate base rate plus 7.25% per annum. In addition, Montreign Operating will pay a commitment fee to each Term A Loan lender ("Term A Lender") equal to the undrawn amount of such Term A Lender's Term A Loan commitment multiplied by a rate equal to 2.5% per annum for the period commencing on the Loan Closing Date through March 24, 2018 and 5.0% per annum thereafter.

In the event that the Term B Loan is prepaid or repaid in whole or in part for any reason other than as a result of scheduled amortization and certain other exceptions, Montreign Operating is required to pay pre-payment premiums based on a make-whole if the prepayment occurs from the Loan Closing Date to (but excluding) the 30th-month anniversary following the Loan Closing Date (the "30th Month"), and a 2% and 1% premium if the prepayment occurs from the 30th Month to (but excluding) the 42nd-month anniversary of the Loan Closing Date (the "42nd Month") and from the 42nd Month to (but excluding) the 54th-month anniversary of the Loan Closing Date, respectively.

Revolving Credit Agreement

On the Loan Closing Date, Montreign Operating also entered into a Revolving Credit Agreement (the "Revolving Credit Agreement"), among Montreign Operating, the lenders from time to time party thereto, and Fifth Third Bank, as administrative agent. The Revolving Credit Agreement provides for loans or other extensions of credit to be made to Montreign Operating in an aggregate principal amount of up to $15 million (including a letter of credit sub-facility of $10 million) (the "Revolving Credit Facility"), the proceeds of which may be used for working capital needs, capital expenditures and other general corporate purposes following the opening of the Casino Project to the public. The Revolving Credit Facility will mature on January 24, 2022. Interest will accrue on outstanding borrowings at a rate equal to LIBOR plus 5.0% per annum, or an alternate base rate plus 4.0% per annum.

Collateral and Other Provisions

The Term Loan Facility and the Revolving Credit Facility are each guaranteed by the Montreign Subsidiaries and are secured by security interests in substantially all the real and personal property of Montreign Operating and the Montreign Subsidiaries and by a pledge of all the membership interests of Montreign Operating held by Montreign Holding. In addition, Empire delivered a completion guaranty in connection with the Term Loan Facility guaranteeing the completion of the construction of the Casino Project and the Entertainment Village Project. Empire's liability under the completion guaranty (excluding lender's enforcement costs) is capped at $30 million.

The Term Loan Facility and the Revolving Credit Agreement contain representations and warranties, affirmative covenants, negative covenants and financial covenants that are usual and customary, including representations, warranties and covenants that, among other things, restrict the ability of Montreign Operating and the Montreign Subsidiaries to incur additional debt, incur or permit liens on assets, make investments and acquisitions, consolidate or merge with any other company, or make dividends or other distributions. Additionally, Montreign Operating is required to deposit $35 million into the lender-controlled account holding the net proceeds of the Term Loan Facility and the Kien Huat Montreign Loan, which amount will be used towards the Entertainment Village Project. Of this payment, $15 million is required to be deposited by June 30, 2107 and the remaining $20 million is required to be deposited by December 31 2017. The $35 million must be funded in the form of a further equity contribution to Montreign Operating. The Company expects to raise additional equity capital by the dates on which the deposits must be made.

Obligations under the Term Loan Agreement and the Revolving Credit Agreement may be accelerated upon certain customary events of default (subject to grace periods, as appropriate), including, among others: nonpayment of principal, interest or fees; breach of the affirmative or negative covenants; revocation of a gaming license for seven consecutive business days; and a change of control (as such term is defined in the Term Loan Agreement) of Montreign Operating.

To further fund the Development Projects, on January 24, 2017, Montreign Operating entered into the Term Loan Agreement and Montreign Holding entered into the Kien Huat Montreign Loan Agreement. In connection with the consummation of the Term Loan Agreement, on the Loan Closing Date, that certain construction loan agreement (the "Kien Huat Construction Loan Agreement") dated October 13, 2016, by and between Kien Huat and Montreign Operating expired on its terms without being utilized by Montreign Operating. Montreign Operating and Kien Huat had entered into the Kien Huat Construction Loan Agreement to provide Montreign Operating with short-term access to up to $50 million of loans to pay the expenses of the Casino Project while the debt financing for the Development Projects was being finalized.

Kien Huat Montreign Loan Agreement

On the Loan Closing Date, Kien Huat and Montreign Holding entered into the Kien Huat Montreign Loan Agreement, pursuant to which Montreign Holding obtained from Kien Huat a loan in the principal amount of $32.3 million, the net proceeds of which will be used as a capital contribution to Montreign Operating for use towards the expenses of the Development Projects. The Kien Huat Montreign Loan shall mature on February 24, 2024 (the "Kien Huat Loan Maturity Date"), which Kien Huat Loan Maturity Date may be extended by Kien Huat in its sole discretion by up to an additional year.

The Kien Huat Montreign Loan bears interest at a rate of 12% per annum. Prior to the Kien Huat Loan Maturity Date, interest on the Kien Huat Montreign Loan shall accrue and be added to the outstanding principal of the Kien Huat Montreign Loan (the "Principal Indebtedness") on the first business day of each calendar month beginning on February 1, 2017 (each an "Interest Payment Date") and shall thereafter be deemed to be part of the Principal Indebtedness. The Principal Indebtedness, including all interest due through the applicable Interest Payment Date and other amounts due under the Kien Huat Montreign Loan, shall be payable in cash on the Kien Huat Loan Maturity Date. Notwithstanding the foregoing, Montreign Holding shall be required to pay in cash to Kien Huat, at the end of any "accrual period" (as defined in Section 1275(a)(5) of the Internal Revenue Code of 1986, as amended (the "Code")) ending after the fifth anniversary of the Loan Closing Date the aggregate amount by which (x) the sum of (i) the amount of accrued interest on the Kien Huat Montreign Loan that has been added to the Principal Indebtedness plus (ii) any other accrued but unpaid original issue discount (as determined under Section 163(i) of the Code) on the Kien Huat Montreign Loan from the closing date through the end of such accrual period, in each case that has not been paid in cash, exceeds (y) the product of (i) the "issue price" (as defined for purposes of the Code) and (ii) the "yield to maturity" (as defined for purposes of the Code). In addition to the interest payable on the Kien Huat Montreign Loan, Kien Huat was entitled to a commitment fee of 1%, which fee was added to the Principal Indebtedness of the Kien Huat Montreign Loan.

Until the Kien Huat Montreign Loan is repaid in full, Montreign Holding shall make no dividend or other distributions to Empire except (i) for purposes of paying bona fide corporate overhead expenses in an amount not to exceed $9 million (which

amount is subject to further reduction pursuant to the Kien Huat Montreign Loan Agreement) and (ii) for purposes of the payiment of taxes by Empire, to the extent also permitted by the Term Loan Agreement with respect to distributions to Montreign Operating. The Kien Huat Montreign Loan may be prepaid in full or in part at any time without premium or penalty.

The obligations of Montreign Holding under the Kien Huat Montreign Loan Agreement are secured by a pledge of all the membership interests of Montreign Holding by Empire. The Kien Huat Montreign Loan Agreement contains representations and warranties and affirmative covenants that are usual and customary, including representations, warranties and covenants that, among other things, restrict Montreign Holding's use of the proceeds of the Kien Huat Montreign Loan to expenses relating to the Development Projects. Obligations under the Kien Huat Montreign Loan Agreement may be accelerated upon certain customary events of default (subject to grace periods, as appropriate), including, among others: nonpayment of principal, interest or fees; breach of the affirmative covenants and a default with respect to the payment of principal or interest under the Term Loan by Montreign Operating or acceleration of the Term Loan for any reason.

Contingent Liability Settlement

On January 4, 2017, the Company entered into an agreement (the "Settlement Agreement") to issue 33,333 shares (the "Settlement Shares") of its common stock to an individual "Claimant" as part of the settlement of a claim asserted in connection with Claimant's alleged provision of services to the Company. Pursuant to the Settlement Agreement, the Company issued the Settlement Shares on January 9, 2017. The Settlement Agreement provided for the a mutual full release of all potential claims upon the Company's delivery of such Settlement Shares to Claimant. The amount of the liability of $758,000 was recorded in accrued expenses at December 31, 2016.

Item 9. Changes In and Disagreements with Accountants on Accounting and Financial Disclosure.

None.

Item 9A. Controls and Procedures.

We carried out an evaluation as of December 31, 2016 under the supervision and with the participation of management, including our Chief Executive Officer and Chief Financial Officer, of the effectiveness of the design and operation of our disclosure controls and procedures as required by Rule 13a-15 of the Securities Exchange Act of 1934, as amended. Based upon that evaluation, our Chief Executive Officer and Chief Financial Officer concluded that our disclosure controls and procedures are effective.

The evaluation of Empire Resorts, Inc.'s disclosure controls and procedures and internal control over financial reporting included a review of our objectives and processes, implementation by us and the effect on the information generated for use in this Annual Report. In the course of this evaluation and in accordance with Section 302 of the Sarbanes Oxley Act of 2002, we sought to identify material weaknesses in our controls, to determine whether we had identified any acts of fraud involving personnel who have a significant role in our internal control over financial reporting that would have a material effect on our consolidated financial statements, and to confirm that any necessary corrective action, including process improvements, were being undertaken. Our evaluation of our disclosure controls and procedures is done quarterly and management reports the effectiveness of our controls and procedures in our periodic reports filed with the Securities and Exchange Commission. Our internal control over financial reporting is also evaluated on an ongoing basis by our internal auditors and by other individuals in our organization. The overall goals of these evaluation activities are to monitor our disclosure controls and procedures and internal control over financial reporting and to make modifications as necessary. We periodically evaluate our processes and procedures and make improvements as required.

Because of inherent limitations, disclosure controls and procedures and internal control over financial reporting may not prevent or detect misstatements. In addition, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions or that the degree of compliance with the policies or procedures may deteriorate. Management applies its judgment in assessing the benefits of controls relative to their costs. Because of the inherent limitations in all control systems, no evaluation of controls can provide absolute assurance that all control issues and instances of fraud, if any, within the company have been detected. The design of any system of controls is based in part upon certain assumptions about the likelihood of future events, and there can be no assurance that any design will succeed in achieving its stated goals under all potential future conditions, regardless of how remote.

Disclosure Controls and Procedures

Disclosure controls and procedures are designed with the objective of ensuring that (i) information required to be disclosed in our reports filed under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the rules and forms of the Securities and Exchange Commission and (ii) information is accumulated and communicated to management, including our Chief Executive Officer and Chief Financial Officer, as appropriate to allow timely decisions regarding required disclosures. Based on their evaluation, our Chief Executive Officer and Chief Financial Officer have concluded that our disclosure controls and procedures are effective.

Management's Report on Internal Control over Financial Reporting

Our management is responsible for establishing and maintaining adequate internal control over financial reporting, as such term is defined in Exchange Act Rule 13a-15(f). Under the supervision and with the participation of our management, including our Chief Executive Officer and Chief Financial Officer, we conducted an evaluation of the effectiveness of our internal control over financial reporting based on the framework in Internal Control—Integrated Framework (2013 framework) (the COSO criteria) issued by the Committee of Sponsoring Organizations of the Treadway Commission. Internal control over financial reporting is a process designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles and includes those policies and procedures that (a) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the Company; (b) provide reasonable assurance that transactions are recorded as necessary to permit the preparation of financial statements in accordance with generally accepted accounting principles and that receipts and expenditures of the Company are being made only in accordance with authorizations of the our management and directors; and (c) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use or disposition of the Company's assets that could have a material effect on the financial statements. Based on our evaluation under the framework in Internal Control—Integrated Framework (2013 framework) (the COSO criteria), our management concluded that our internal control over financial reporting was effective as of December 31, 2016.

There were no changes in our internal controls over financial reporting during the fourth quarter of the year ended December 31, 2016 that have materially affected, or are reasonably likely to materially affect, the registrant's internal control over financial reporting.

Ernst & Young LLP, the Company's independent registered public accounting firm, that audited the consolidated financial statements included in this Annual Report on Form 10-K, issued an attestation report on the Company's internal control over financial reporting within this report.

Item 9B. Other Information.

None.

PART III

Item 10. Directors, Executive Officers and Corporate Governance.

Directors and Executive Officers

Our directors and executive officers are as follows:

Name	Age	Position
Emanuel R. Pearlman	56	Executive Chairman of the Board
Joseph A. D'Amato	69	Chief Executive Officer and Director
Keith L. Horn	58	Director
Edmund Marinucci	67	Director
Nancy A. Palumbo	56	Director
Gregg Polle	56	Director
Laurette J. Pitts	48	Executive Vice President, Chief Operating Officer/Chief Financial Officer
Charles Degliomini	58	Executive Vice President
Nanette L. Horner	52	Executive Vice President, Chief Counsel and Chief Compliance Officer

The terms of all of our current directors will expire at the 2017 Annual Meeting of Stockholders, and all directors will be up for election for one-year terms at the 2017 Annual Meeting of Stockholders and at every subsequent annual meeting of stockholders. Any director chosen as a result of a newly created directorship or to fill a vacancy on the Board would hold office for a term expiring at the next annual meeting of stockholders. This does not change the present number of directors or the Board's authority to change that number and to fill any vacancies or newly created directorships.

The business experience of each or our directors and executive officers is as follows:

Emanuel R. Pearlman has served as a director since May 2010 and as the Executive Chairman of the Board since June 2016. Mr. Pearlman served as Chairman of the Board from September 2010 through May 2016. Mr. Pearlman currently serves as Chairman and CEO of Liberation Investment Group, LLC, a New York based investment management and financial consulting firm, a position he has held since January 2003. Since January 2012, he has served on the board of directors of Network-1 Technologies, Inc. (NYSE MKT:NTIP), where he serves as chairman of the audit committee and a member of the corporate governance committee. From January 2012 through January 2013, he served on the Board of Dune Energy. From October 2006 to March 2010, Mr. Pearlman served on the board of Multimedia Games, Inc. (NASDAQ-GS:MGAM). Mr. Pearlman holds an MBA from Harvard Business School and a B.A. in Economics from Duke University.

Joseph A. D'Amato has served as our Chief Executive Officer since January 2010 and as our Chief Financial Officer from September 2009 to December 2010. Mr. D'Amato has served as a director since September 2010. Prior to his employment with the Company, Mr. D'Amato most recently served as Chief Executive Officer of Mount Airy Casino Resort in Pennsylvania from 2007 to 2009 and as Chief Operating Officer of the Seneca Gaming Corporation in Western New York from 2005 to 2007, and as its Chief Financial Officer from 2002 to 2005. During his earlier career in the gaming industry, Mr. D'Amato served in various executive capacities with Resorts International, Trump Entertainment, Bally's Park Place and Golden Nugget organizations. Mr. D'Amato has participated in raising over $2 billion in the public and bank finance markets, and has extensive experience with Sarbanes Oxley and the filing requirements and regulations of the SEC.

Keith L. Horn has served as a director of the Company since April 2016. He served as Chief Operating Officer and a member of the Management Committee of Elliott Management Corporation ("Elliott"), a global, multi-strategy private investment fund with more than $30 billion of assets under management, from 2003 to 2015. Mr. Horn's role at Elliot encompassed, among other things, direct responsibility for operations, accounting, finance, IT, applications development, human resources, compliance and all aspects of infrastructure and security. From 2011 to 2015, Mr. Horn served as a member of the board of directors of the Managed Funds Association, and was also a member of such board's Executive Committee and served as Chairman of its Nominating Committee and Chairman of its International Affairs Committee. Prior to joining Elliott, beginning in 1987, Mr. Horn spent 16 years at Merrill Lynch serving in various capacities, including global head of Leveraged Finance, head of Latin America Debt, Chief of Staff to the Chairman and President and a managing director in High Yield Finance and Investment Banking. Mr. Horn began his career in private practice as a corporate and securities attorney. He is a member of the Binghamton University Foundation Board of Directors and a member of the Foundation's Investment

Committee. In addition, Mr. Horn is a member of the Board of Directors of Peace Players International. Mr. Horn received his J.D. cum laude from Georgetown University Law Center and holds B.A. degrees in Economics and Political Science from Binghamton University, where he graduated Phi Beta Kappa with highest honors.

Edmund Marinucci has served as a director of the Company since March 2014. Mr. Marinucci has been a partner at PCH Hotels, LLC, a boutique hotel and resort operator based in San Francisco that is an operating division of Pacific Union Company since 1983. From October 1983 to December 2008, Mr. Marinucci served as President of PCH Hotels, LLC. During his tenure as President, PCH Hotels owned and managed properties in the U.S. and the Caribbean. Such properties included Meadowood Resort (Napa, California), Windermere Island Club (Bahamas), Divi Resorts (Aruba), Downtown Athletic Club (New York City), Frangipani Resort (Anguilla) and Marriott Resort (Grand Cayman). During his presidency of PCH Hotels, he oversaw the ground-up development of The Hotel Griffon and the renovation and repositioning of the Drisco Hotel (each in San Francisco). Prior to PCH Hotels, Mr. Marinucci served as Director of Development for HCP Hotels/Aston Resorts in Hawaii. In such position, Mr. Marinucci oversaw all development aspects of the hotel group and grew inventory from 15 to 20 hotel resorts. From 1978 to 1981, Mr. Marinucci served as Director of Resort Operations for Kapalua Resort Maui in Hawaii. While at Kapalua Resort Maui, Mr. Marinucci was responsible for the daily operations of the resort, including the Kapalua Bay Hotel, 150 rental villas, two golf courses, The Bay and The Village. He serves on the board of directors of Miami JV Member LLC, a private hotel and resort company, and has previously served on the board of directors of Jameson Inns/Colony Capital, a private hotel and resort company. Mr. Marinucci is a member of The Cornell Hotel Society. Mr. Marinucci received a BS in Hotel Administration from the Cornell University School of Hotel Administration.

Nancy A. Palumbo has served as director since June 2009. Ms. Palumbo also acts as an independent consultant in the areas of strategic marketing, corporate communications and business development. Ms. Palumbo has also served as a principal in CRAMN LLC, a global business development company. From March 2009 to December 2010, she served as President of the Green Planet Group, a company that advised on solar and renewable energy solutions. Prior to joining Green Planet Group, from May 2007 to March 2009, Ms. Palumbo was the General Manager for Walker Digital Lottery and from October 2006 to May 2007, she served as the Senior Vice President for Strategic Marketing and Corporate Communications for the New York Daily News. From January 2004 to October 2006, Ms. Palumbo served as the Director of the New York Lottery, where she managed a $6 billion a year business and oversaw the opening of six video gaming facilities. From February 1995 to January 2004, Ms. Palumbo served as the Executive Deputy Commissioner for the Office of Parks Recreation and Historic Preservation for the State of New York, where she was instrumental in developing public-private partnerships to generate additional revenue to expand park services. Ms. Palumbo is a graduate of St. Bonaventure University.

Gregg Polle was elected to serve as a director in December 2010. Mr. Polle is a Managing Director for Moelis & Company, an investment bank that provides financial advisory services and capital raising solutions to clients in connection with mergers and acquisitions, restructurings and other strategic matters. He has also served as an investment banker with Citigroup Inc. (“Citigroup”) and its predecessors Salomon Brothers and Salomon Smith Barney from 1983 until November 2008. Mr. Polle most recently served as head of the global industrial group at Citigroup and previously was the co-head of Citigroup’s global mergers and acquisitions group. Mr. Polle was a private investor from November 2008 through July 2011. Mr. Polle received a B.S. in Economics from the Wharton School of the University of Pennsylvania.

Laurette J. Pitts has served as the Chief Financial Officer of the Company since December 2010. In August 2011, Ms. Pitts was promoted to Senior Vice President and Chief Financial Officer and in August 2012, she was promoted to Senior Vice President, Chief Operating Officer and Chief Financial Officer and, effective July 1, 2014, she was promoted to Executive Vice President, Chief Operating Officer and Chief Financial Officer. Ms. Pitts has served in various capacities in the gaming industry since 1992. Prior to her employment with the Company, Ms. Pitts most recently served from December 2008 until December 2010, as Regional Vice President of finance and administration for American Racing and Entertainment, LLC, a private company that owns and operates horseracing, resort, and gaming facilities, including Tioga Downs and Vernon Downs. She previously served as Chief Financial Officer for Mohegan Sun at Pocono Downs, a gaming and entertainment facility owned by the Mohegan Tribe of Indians of Connecticut, from April 2005 until November 2008.

Charles Degliomini is the Executive Vice President of Governmental Affairs and Corporate Communications of the Company. He has been an employee or consultant of the Company since 2004 and was promoted to his current position in February 2008. Currently, Mr. Degliomini serves as a director of the New York Gaming Association, a not-for-profit trade association created in 2011 to advance the interests of New York State's nine racetrack casinos. He is on the board of Hudson Valley Economic Development Corporation, a public-private partnership that markets the Hudson Valley region as a prime business location to corporate executives, site selection consultants and real estate brokers. Mr. Degliomini is also a member of the board of directors of the Orange and Sullivan County Boys and Girls Club. Previously, he was Senior Vice President of Sales and Marketing of eLottery, Inc., the first firm to advance the technology to facilitate the sales and marketing of governmental lottery tickets on the Internet. Before taking the position at eLottery, Mr. Degliomini was President and founder of Atlantic Communications, a New York-based corporate and government affairs management company. Mr. Degliomini

served in the General Services Administration as chief of staff to the Regional Administrator from 1985 to 1998, and was the New York State communications director for Reagan-Bush in 1984. Mr. Degliomini has a B.A. in Political Science from Queens College.

Nanette L. Horner was appointed to serve as the Company's Chief Compliance Officer in August 2010 and has served as the Company's Corporate Vice President of Legal Affairs since July 2010. In August 2011, Ms. Horner was promoted to Senior Vice President, Chief Counsel and Chief Compliance Officer and, effective July 1, 2014, she was promoted to Executive Vice President, Chief Counsel and Chief Compliance Officer. Ms. Horner has been involved in the gaming industry, as an attorney, since 1996. Prior to her employment with the Company, Ms. Horner worked in the Office of Chief Counsel, assigned to the Bureau of Licensing of the Pennsylvania Gaming Control Board since July 2005. In September 2006, Ms. Horner was named the Board's first director of the Office of Compulsive and Problem Gambling. She is a member of the Board of Directors for the National Council on Problem Gambling, and is a member of American Mensa and the International Masters of Gaming Law.

Director Independence

The Board evaluates the independence of each nominee for election as a director of our Company in accordance with the NASDAQ listing rules (the "NASDAQ Listing Rules") of the NASDAQ Stock Market LLC ("NASDAQ"). Pursuant to these rules, a majority of our Board must be "independent directors" within the meaning of the NASDAQ Listing Rules, and all directors who sit on our Corporate Governance and Nominations Committee, Audit Committee and Compensation Committee must also be independent directors.

The NASDAQ definition of "independence" includes a series of objective tests, such as the director or director nominee is not, and was not during the last three years, an employee of the Company and has not received certain payments from, or engaged in various types of business dealings with, the Company. In addition, as further required by the NASDAQ Listing Rules, the Board has made a subjective determination as to each independent director that no relationships exist which, in the opinion of the Board, would interfere with such individual's exercise of independent judgment in carrying out his or her responsibilities as a director. In making these determinations, the Board reviewed and discussed information provided by the directors with regard to each director's business and personal activities as they may relate to Company and its management.

As a result, the Board has affirmatively determined that none of our directors has a material relationship with the Company other than Joseph D'Amato, who serves as our Chief Executive Officer, and Emanuel R. Pearlman, who serves as Executive Chairman of the Board. The Board has also affirmatively determined that all members of our Audit Committee, Corporate Governance and Nominations Committee and Compensation Committee are independent directors.

Audit Committee and Audit Committee Financial Expert

We have a separately-designated standing Audit Committee established in accordance with Section 3(a)(58)(A) of the Exchange Act and NASDAQ Listing Rules. The Audit Committee is comprised of Ms. Palumbo, Mr. Horn and Mr. Polle. Our Board has determined that Mr. Horn and Mr. Polle qualify as audit committee financial experts as defined by Securities and Exchange Commission rules, based on his education, experience and background. Please see the biographical information above for a description of Mr. Horn's and Mr. Polle's relevant experience.

Code of Conduct and Business Ethics

We adopted a Code of Business Conduct and Ethics, applicable to all employees, and a Code of Ethics for the Principal Executive Officer and Senior Financial Officer(s), each of which is available on our internet website (www.empireresorts.com) and will be provided in print without charge to any stockholder who submits a request in writing to Empire Resorts, Inc. Investor Relations, c/o Monticello Casino and Raceway, 204 State Route 17B, P.O. Box 5013, Monticello, New York 12701. Any amendment to and waivers from the Code of Ethics with respect to the Company's Chief Executive Officer or Chief Financial Officer will be posted on the Company's website.

Section 16(a) Beneficial Ownership Reporting Compliance

Section 16(a) of the Exchange Act requires our executive officers and directors, and persons who beneficially own more than ten percent of our common stock, to file initial reports of ownership and reports of changes in ownership with the SEC. Executive officers, directors and greater than ten percent beneficial owners are required by SEC regulations to furnish us with copies of all Section 16(a) forms they file. Based upon a review of the copies of such forms furnished to us and written representations from our executive officers and directors, we believe that during the year ended December 31, 2016 there were no delinquent filers.

Item 11. Executive Compensation.

Summary Compensation Table

The following table sets forth all information concerning the compensation earned, for the fiscal years ended December 31, 2016, 2015 and 2014 for services rendered to us by persons who served as our CEO and CFO during 2016, 2015 and 2014, as well as each of our three other most highly compensated executive officers who were serving as executive officers at the end of 2016, 2015 and 2014, all of whom we refer to herein collectively as our "Named Executive Officers."

Name and Principal Position	Year	Salary ($)		Bonus ($)	Restricted Stock Awards ($) (5)	All Other Compensation ($)		Total ($)
Emanuel R. Pearlman (1)	2016	357,500	(1)	200,000	—	17,500	(1)	575,000
Executive Chairman of the Board								
Joseph A. D'Amato	2016	398,269		200,000	205,000	33,540	(2)	836,809
Chief Executive Officer	2015	375,000		225,000	651,250	31,418	(3)	1,282,668
	2014	375,000		125,000	33,300	26,707	(4)	560,007
Laurette J. Pitts	2016	240,000		65,000	—	—		305,000
Executive Vice President, Chief Operating Officer and Chief Financial Officer	2015	240,000		100,000	260,500	—		600,500
	2014	234,808		85,000	33,300	—		353,108
Charles Degliomini	2016	257,500		50,000	—	—		307,500
Executive Vice President	2015	260,000		100,000	260,500	—		620,500
	2014	250,000		85,000	33,300	—		368,300
Nanette L. Horner	2016	225,000		50,000	—	14,400	(5)	289,400
Executive Vice President, Chief Counsel and Chief Compliance Officer	2015	225,000		100,000	260,500	14,400	(5)	599,900
	2014	219,808		100,000	33,300	14,400	(5)	367,508

(1) Mr. Pearlman served as a non-employee director until May 31, 2016, whereupon he became the Executive Chairman of the Board of Directors and a Company employee. Mr. Pearlman will be paid an annual salary of $650,000 in his role as Executive Chairman but does not have an employment agreement with the Company. All Other Compensation includes $17,500 paid to an entity wholly-owned by Mr. Pearlman as reimbursement for medical benefits and administrative expenses provided by such entity in lieu of Company benefits.

(2) All Other Compensation consists of $23,368 in housing allowance, $5,034 in allocation of personal use of a Company vehicle, and $5,138 for an excess life insurance policy paid by the Company.
(3) All Other Compensation consists of $22,228 in housing allowance, $4,052 in allocation of personal use of a Company vehicle, and $5,138 for an excess life insurance policy paid by the Company.
(4) All Other Compensation consists of $18,000 in housing allowance, $3,569 in allocation of personal use of a Company vehicle, and $5,138 for an excess life insurance policy paid by the Company.
(5) All Other Compensation consists of $14,400 in housing and travel allowance.
(6) These amounts reflect the aggregate grant date fair value of restricted stock granted in the year ended December 31, 2016 under our 2005 Equity Incentive Plan computed in accordance with ASC Topic 718 (formerly SFAS No. 123(R)). Please see Notes B and H to our consolidated financial statements contained in this Annual Report on Form 10-K for the fiscal year ended December 31, 2016 for more information. The grant dates for the Restricted Stock are August 2, 2016, May 5, 2015, August 11, 2014 and November 12, 2013, respectively.

Narrative Disclosure to Summary Compensation Table

The following is a description of our current executive employment agreements:

Joseph A. D'Amato

On November 26, 2012, the Company entered into an employment agreement with Mr. D'Amato, pursuant to which Mr. D'Amato will continue to serve as the Company's Chief Executive Officer. This employment agreement supersedes Mr. D'Amato's prior employment agreement with the Company. Mr. D'Amato's employment agreement provides for a term ending on December 31, 2015, which was later extended as hereinafter described, unless Mr. D'Amato's employment is earlier terminated by either party in accordance with the provisions thereof. Mr. D'Amato is to receive a base salary at the rate of $375,000 per year for the term of the agreement and such incentive compensation and bonuses, if any, (i) as the Compensation Committee in its discretion may determine, and (ii) to which Mr. D'Amato may become entitled pursuant to the terms of any incentive compensation or bonus program, plan or agreement from time to time in effect in which he is a participant. Mr. D'Amato will receive a monthly housing allowance in the amount of $1,500. In addition, the Company will lease or purchase an automobile for Mr. D'Amato's sole and exclusive use, and be responsible for the payment of certain expenses related to that vehicle, with an approximate monthly value of $1,500. The Company obtained and shall maintain a key man life insurance policy for Mr. D'Amato providing death benefits in the amount of $1 million to Mr. D'Amato's estate and which policy may, at the option of the Company's Compensation Committee, provide death benefits of $3 million to the Company. In the event that the Company terminates Mr. D'Amato's employment with Cause (as defined in the agreement) or Mr. D'Amato resigns without Good Reason (as defined in the agreement), the Company's obligations are limited generally to paying Mr. D'Amato his base salary, unpaid expenses and any benefits to which Mr. D'Amato is entitled through the termination date (collectively "Accrued Obligations"). In the event that Mr. D'Amato's employment is terminated as a result of death or disability, Mr. D'Amato or his estate, as the case may be, is entitled to receive the Accrued Obligations and any unvested options held by Mr. D'Amato shall become vested immediately and remain exercisable through the remainder of its original five-year term. In the event that the Company terminates Mr. D'Amato's employment without Cause or Mr. D'Amato resigns with Good Reason, the Company is obligated to continue to pay (i) the Accrued Obligations, (ii) a pro rata portion of any bonus awarded pursuant to a bonus plan in which is a participant (based on the days worked during the applicable year) and (iii) Mr. D'Amato's compensation for the lesser of (A) 18 months or (B) the remainder of the term of the agreement and accelerate the vesting of the options granted in contemplation of the agreement, which options shall remain exercisable through the remainder of their original five-year term. In the event that the Company terminates Mr. D'Amato's employment without Cause or Mr. D'Amato resigns with Good Reason on or following a Change in Control (as defined in the agreement), the Company is generally obligated to continue to pay Mr. D'Amato's compensation for the greater of (A) 24 months or (B) the remainder of the term of the agreement and accelerate the vesting of the options held by Mr. D'Amato, which options shall remain exercisable through the remainder of their original five-year term.

On May 29, 2014, the Company entered into Amendment No. 1 to the employment agreement with Mr. D'Amato for the purpose of amending the definition of "Change in Control" such that a change in the majority of the Board as a result of a financing, merger, combination, acquisition, takeover or other non-ordinary course transaction without the approval of the current members of the Board would constitute a Change in Control.

On June 30, 2015, the Company entered into Amendment No. 2 to the employment agreements with Mr. D'Amato for the purpose of extending the termination date of the employment agreement from December 31, 2015 to December 31, 2016. Furthermore, Amendment No. 2 provides that the termination date of the employment agreement shall be automatically extended to December 31, 2018 if the Company is granted a gaming facility license ("Gaming Facility License") by NYSGC with respect to the the Casino Project. On December 21, 2015, the Company was awarded such Gaming Facility License.

Amendment No. 2 further provided that, beginning on the date the Company is granted a Gaming Facility License until the earlier of (i) the termination of the employment agreement or (ii) the completion of the Casino Project, the Company shall provide to Mr. D'Amato furnished housing in Sullivan County, New York, that is mutually agreeable to the Company and Mr. D'Amato in place of a housing allowance.

On August 2, 2016, the Company entered into an Amended and Restated Employment Agreement with Mr. D'Amato, which agreement is effective as of July 1, 2016 (the "Restated D'Amato Employment Agreement"). Pursuant to the Restated D'Amato Employment Agreement, the term of Mr. D'Amato's service as Chief Executive Officer is extended from December 31, 2018 through June 28, 2019. In addition, Mr. D'Amato's base salary increased from $375,000 to $425,000 per annum. Further, the geographic radius for the non-competition agreement between Mr. D'Amato and the Company was extended from 60 miles to 100 miles from any location at which any Empire Company (as such term is defined in the Restated D'Amato Employment Agreement) conducts its business. Except for the amendments described herein, the other terms of Mr. D'Amato's employment remain materially unchanged.

In connection with the execution of the Restated D'Amato Employment Agreement, Mr. D'Amato was granted 12,500 shares of common stock subject to the 2015 Equity Incentive Plan. One-half of the shares vested on August 2, 2016 and the remaining shares will vest on August 2, 2018. In the event of a Change in Control, all shares will vest immediately.

Laurette J. Pitts

On August 17, 2012, the Company entered into an employment agreement with Ms. Pitts pursuant to which Ms. Pitts became the Company's Chief Operating Officer and continued to serve as the Company's Senior Vice President and Chief Financial Officer. This employment agreement supersedes Ms. Pitts's prior employment agreement with the Company. The employment agreement provides for a term ending on December 31, 2014, which was later extended as hereinafter described, unless Ms. Pitts' employment is terminated earlier by either party in accordance with the provisions thereof. Ms. Pitts is to receive a base salary at the annual rate of $230,000 per year and such incentive compensation and bonuses, if any, (i) as the Compensation Committee in its discretion may determine and (ii) to which Ms. Pitts may become entitled pursuant to the terms of any incentive compensation or bonus program, plan or agreement from time to time in effect in which she is a participant. In the event that the Company terminates Ms. Pitts's employment with Cause (as defined in the agreement) or Ms. Pitts resigns without Good Reason (as defined in the agreement), the Company's obligations are limited generally to paying Ms. Pitts her base salary, unpaid expenses and any benefits to which Ms. Pitts is entitled through the termination date (the "Accrued Compensation"). In the event that Ms. Pitts's employment is terminated as a result of death or disability, Ms. Pitt's or her estate, as the case may be, is entitled to receive the Accrued Compensation and any unvested options held by Ms. Pitts shall become vested immediately and remain exercisable through the remainder of its original five-year term. In the event that the Company terminates Ms. Pitts' employment without Cause or Ms. Pitts resigns with Good Reason, in addition to the Accrued Compensation, the Company is obligated to pay (i) a pro-rata portion of any bonus awarded pursuant to a bonus plan in which she is a participant (based on the days worked during the applicable year) and (ii) Ms. Pitts' compensation for the lesser of (A) 18 months or (B) the remainder of the term of the agreement and accelerate the vesting of the options granted in contemplation of the agreement, which options shall remain exercisable through the remainder of its original five-year term. In the event that the Company terminates Ms. Pitts' employment without Cause or Ms. Pitts resigns with Good Reason on or following a Change in Control (as defined in the agreement), the Company is generally obligated to continue to pay Ms. Pitts's compensation for the greater of (i) 24 months or (ii) the remainder of the term of the agreement and accelerate the vesting of the options granted in contemplation of the agreement, which options shall remain exercisable through the remainder of its original five-year term.

On May 29, 2014, the Company entered into Amendment No. 1 to the employment agreement with Ms. Pitts, which amendment was effective as of July 1, 2014. Pursuant to such amendment, (i) the termination date of Ms. Pitts' employment agreement was extended from December 31, 2014 to December 31, 2015, (ii) her base salary was increased from $230,000 to $240,000 and (iii) "Executive Vice President" was added to her title. In addition, pursuant to the amendment, the definition of "Change in Control" was amended such that a change in the majority of the Board as a result of a financing, merger, combination, acquisition, takeover or other non-ordinary course transaction without the approval of the current members of the Board would constitute a Change in Control.

On June 30, 2015, the Company entered into Amendment No. 2 to the employment agreements with Ms. Pitts extending the termination date of the employment agreement from December 31, 2015 to December 31, 2016. Furthermore, Amendment No. 2 provided that such term would be automatically extended to December 31, 2018, if the Company is granted a Gaming Facility License by the NYSGC with respect to the Casino Project. On December 21, 2015, the Company was awarded such Gaming Facility License.

Charles A. Degliomini

On December 7, 2012, the Company entered into an employment agreement with Mr. Degliomini to continue to serve as the Company's Executive Vice President and/or such other titles as may be granted by the Company. This employment agreement supersedes Mr. Degliomini's prior employment agreement with the Company. Mr. Degliomini's employment agreement provides for a term ending on December 31, 2014, which was later extended as hereinafter described, unless Mr. Degliomini's employment is terminated by either party in accordance with the provisions thereof. Mr. Degliomini is to receive a base salary at the annual rate of $250,000 and such incentive compensation and bonuses, if any, (i) as the Compensation Committee in its discretion may determine, and (ii) to which Mr. Degliomini may become entitled pursuant to the terms of any incentive compensation or bonus program, plan or agreement from time to time in effect in which he is a participant. In the event that the Company terminates Mr. Degliomini's employment with Cause (as defined in the agreement) or Mr. Degliomini resigns without Good Reason (as defined in the agreement), the Company's obligations are limited generally to paying Mr. Degliomini his base salary, unpaid expenses and any benefits to which Mr. Degliomini in entitled through the termination date (collectively "Accrued Obligations"). In the event Mr. Degliomini's employment is terminated as a result of death or disability, Mr. Degliomini's or his estate, as the case may be, is entitled to receive the Accrued Obligations and any unvested options held by Mr. Degliomini shall become vested immediately and remain exercisable through the remainder of its original five-year term. In the event that the Company terminates Mr. Degliomini's employment without Cause or Mr. Degliomini resigns with Good Reason, the Company is obligated to pay (i) the Accrued Obligations, (ii) a pro rata portion of any bonus awarded pursuant to a bonus plan in which he is a participant (based on the days worked during the applicable year) and (iii) Mr. Degliomini's compensation for the lesser of (A) 18 months or (B) the remainder of the term of the agreement and accelerate the vesting of the options granted in contemplation of the agreement, which options shall remain exercisable through the remainder of its original five-year term. In the event that the Company terminates Mr. Degliomini's employment without Cause or Mr. Degliomini resigns with Good Reason on or following a Change in Control (as defined in the agreement), the Company is generally obligated to continue to pay Mr. Degliomini's compensation for the greater of (i) 24 months or (ii) the remainder of the term of the agreement and accelerate the vesting of the options granted in contemplation of the agreement, which options shall remain exercisable through the remainder of its original five-year term.

On August 24, 2014, the Company entered into Amendment No. 1 to the employment agreement with Mr. Degliomini. Pursuant to such amendment, (i) the termination date of Mr. Degliomini's employment agreement was extended from December 31, 2014 to December 31, 2015 and (ii) his base salary was increased from $250,000 to $257,000. In addition, pursuant to the amendment, the definition of "Change in Control" was amended such that a change in the majority of the Board as a result of a financing, merger, combination, acquisition, takeover or other non-ordinary course transaction without the approval of the current members of the Board would constitute a Change in Control.

On June 30, 2015, the Company entered into Amendment No. 2 to the employment agreements with Mr. Degliomini extending the termination date of such agreement from December 31, 2015 to December 31, 2016. Furthermore, Amendment No.2 provided that such term would be automatically extended to December 31, 2018 if the Company is granted a Gaming Facility License by the NYSGC with respect to the Casino Project. On December 21, 2015, the Company was awarded such Gaming Facility License.

Nanette L. Horner

On August 22, 2012, the Company entered into an employment agreement with Ms. Horner, pursuant to which Ms. Horner will continue to serve as the Company's Senior Vice President, Chief Compliance Officer and Chief Counsel. This employment agreement supersedes Ms. Horner's prior employment agreement with the Company. Ms. Horner's employment agreement provides for a term ending on December 31, 2014, which was later extended as hereinafter described, unless Ms. Horner's employment is earlier terminated by either party in accordance with the provisions thereof. Ms. Horner will receive a base salary of $215,000 and such incentive compensation and bonuses, if any, (i) as the Compensation Committee in its discretion may determine, and (ii) to which Ms. Horner may become entitled pursuant to the terms of any incentive compensation or bonus program, plan or agreement from time to time in effect in which she is a participant. Ms. Horner will also receive a monthly lodging and travel expense allowance of $1,200. In the event that the Company terminates Ms. Horner's employment with Cause (as defined in the agreement) or Ms. Horner resigns without Good Reason (as defined in the agreement), the Company's obligations are limited generally to paying Ms. Horner her base salary, unpaid expenses and any benefits to which Ms. Horner is entitled through the termination date (the "Accrued Compensation"). In the event that Ms. Horner's employment is terminated as a result of death or disability, Ms. Horner's or her estate, as the case may be, is entitled to receive the Accrued Obligations and any unvested options held by Ms. Horner shall become vested immediately and remain exercisable through the remainder of its original five-year term. In the event that the Company terminates Ms. Horner's employment without Cause or Ms. Horner resigns with Good Reason, the Company is obligated to pay (i) the Accrued Compensation, (ii) a pro-rata portion of any bonus awarded pursuant to any annual bonus plan in which she is a participant (based on the days worked during the applicable year) and (iii) Ms, Horner's compensation for the lesser of (A) 18 months or (B) the remainder of the term of the

agreement and accelerate the vesting of the options granted in contemplation of the agreement, which options shall remain exercisable through the remainder of its original five-year term. In the event that the Company terminates Ms. Horner's employment without Cause or Ms. Horner resigns with Good Reason on or following a Change in Control (as defined in the agreement), the Company is generally obligated to continue to pay Ms. Horner's compensation for the greater of (i) 24 months or (ii) the remainder of the term of the agreement and accelerate the vesting of the options held by Ms. Horner, which options shall remain exercisable through the remainder of its original five-year term.

On May 30, 2014, the Company entered into Amendment No. 1 to the employment agreement with Ms. Horner, which amendment was effective as of July 1, 2014. Pursuant to such amendment, (i) the termination date of Ms. Horner's employment agreement was extended from December 31, 2014 to December 31, 2015, (ii) her base salary was increased from $215,000 to $225,000 and (iii) "Executive Vice President" was added to her title. In addition, pursuant to the amendment, the definition of "Change Control" was amended such that a change in the majority of the Board as a result of a financing, merger, combination, acquisition, takeover or other non-ordinary course transaction without the approve of the current members of the Board would constitute a Change in Control.

On June 30, 2015, the Company entered into Amendment No. 2 to the employment agreement with Ms. Horner extending the termination date of such agreement from December 31, 2015 to December 31, 2016. Furthermore, Amendment No.2 provided that such term would be automatically extended to December 31, 2018, if the Company is granted a Gaming Facility License by the NYSGC with respect to the casino project. On December 21, 2015, the Company was awarded such Gaming Facility License .

Outstanding Equity Awards at Fiscal Year-End

The following table sets forth information concerning the outstanding equity awards of each of the Named Executive Officers as of December 31, 2016:

	Option Awards					Stock Awards		
Name	Number of Securities Underlying Unexercised Options: Exercisable	Number of Securities Underlying Unexercised Options: Unexercisable	Option Exercise Price ($)	Option Expiration Date		Number of Shares of Stock That Have Not Vested	Market Value of Shares of Stock That Have Not Vested ($)	
Emanuel R. Pearlman	—	2,000	24.75	11/11/2018	(1)			
						3,000	68,250	(3)
						50,000	1,137,500	(4)
						75,000	1,706,250	(5)
Joseph A. D'Amato	—	—	—					
						25,000	568,750	(4)
						6,250	142,188	(6)
Laurette J. Pitts	—	—	—					
						10,000	227,500	(4)
							—	
Charles Degliomini	5,000	—	111.00	5/23/2017	(2)			
						10,000	227,500	(4)
Nanette L. Horner	—	—	—					
						10,000	227,500	(4)

(1) Grant date November 12, 2013; vesting 25% on grant date, 25% on 2/12/2014, 25% on 5/12/2014 and 25% on 8/12/2014; 10-year term.

(2) Grant date May 24, 2007; vesting 33.3% on grant date, 33.3% one year after grant date and 33.4% two years after grant date; 10-year term.
(3) Grant under the 2005 Empire Resorts, Inc. Second Amended and Restated Equity Incentive Plan (the "2005 Equity Incentive Plan"). Grant date November 3, 2015; vesting 100% on 1/6/2017.
(4) Grant date May 5, 2015; vesting 50% on which the NYSGC authorizes the opening of the Casino Project to the public ("Casino Date"), 50% at the six month anniversary of the Casino Date; immediate vesting in the event of a Change in Control (as defined in the award).
(5) Grant date March 3, 2016; vesting 25% on 3/16/2017, 25% on 3/16/2018, 255 on 3/16/2019 and 25% on 3/16/2020.
(6) Grant date August 2, 2016; vesting 50% on grant date and 50% two years after grant date.

Outstanding Equity Awards Narrative Disclosure

Second Amended and Restated 2005 Equity Incentive Plan

In May 2015, our 2005 Equity Incentive Plan expired. Options to purchase 33,618 shares of common stock were outstanding as of December 31, 2016 under the 2005 Equity Incentive Plan. Although the 2005 Equity Incentive Plan expired, the 33,618 options still outstanding under such plan are still exercisable. In September 2015, our board approved, and in November 2015, our stockholders approved, a new 2015 Equity Incentive Plan, which is discussed below.

2015 Equity Incentive Plan

In September 2015, our Board approved, and in November 2015, our stockholders approved the Company's 2015 Equity Incentive Plan (the "2015 Equity Incentive Plan")

. The purpose of the 2015 Equity Incentive Plan is: (i) to align our interests and recipients of options under the Plan by increasing the proprietary interest of such recipients in our growth and success, and (ii) to advance our interests by providing additional incentives to officers, key employees and well-qualified non-employee directors and consultants who provide services to us, who are responsible for our management and growth, or otherwise contribute to the conduct and direction of our business, operations and affairs.

Administration

The Compensation Committee will administer the 2015 Equity Incentive Plan. The Compensation Committee will have the authority, without limitation (i) to designate participants to receive awards, (ii) determine the types of awards to be granted to participants, (iii) determine the number of shares of common stock to be covered by awards, (iv) determine the terms and conditions of any awards granted under the Plan, (v) determine to what extent and under what circumstances awards may be settled in cash, shares of common stock, other securities, other Awards or other property, or canceled, forfeited or suspended, (vi) determine whether, to what extent, and under what circumstances the delivery of cash, common stock, other securities, other awards or other property and other amounts payable with respect to an award shall be made; (vii) interpret, administer, reconcile any inconsistency in, settle any controversy regarding, correct any defect in and/or complete any omission in this Plan and any instrument or agreement relating to, or award granted under, this Plan; (viii) establish, amend, suspend, or waive any rules and regulations and appoint such agents as the Compensation Committee shall deem appropriate for the proper administration of this Plan; (ix) accelerate the vesting or exercisability of, payment for or lapse of restrictions on, awards; (x) reprice existing awards or to grant awards in connection with or in consideration of the cancellation of an outstanding Award with a higher price; and (xi) make any other determination and take any other action that the Compensation Committee deems necessary or desirable for the administration of this Plan. The Compensation Committee will have full discretion to administer and interpret the Plan and to adopt such rules, regulations and procedures as it deems necessary or advisable and to determine, among other things, the time or times at which the awards may be exercised and whether and under what circumstances an award may be exercised.

Eligibility

Employees, directors, officers, advisers and consultants of the Company or its affiliates are eligible to participate in the 2015 Equity Incentive Plan and are referred to as "Participants." The Compensation Committee has the sole and complete authority to determine who will be granted an award under the 2015 Equity Incentive Plan, however, it may delegate such authority to one or more officers of the Company under the circumstances set forth in the 2015 Equity Incentive Plan.

Number of Shares Authorized

The 2015 Equity Incentive Plan provided for an aggregate of 952,498 shares of common stock to be available for Awards. Subject to adjustments based on the terms of the 2015 Equity Incentive Plan, on the 90th day after the Company was awarded a Gaming Facility License (the "Trigger Date"), the maximum shares of common stock available for Awards were to automatically increase by the lesser of: (i) 1,633,209 shares of common stock; (ii) such number of shares as would increase the aggregate number of shares of common stock available for Awards to 10% of the issued and outstanding shares of common stock as of the Trigger Date; and (iii) such number of shares of common stock as the Compensation Committee would otherwise determine. On March 8, 2016, pursuant to the terms of the 2015 Equity Incentive Plan, the Board of Directors determined to increase the number of shares available for grant under such plan by 1,663,209 shares for a total amount of shares available for grants of 2,600,707. Such change was effective as of March 20, 2016. At December 31, 2016, a total of 2,501,309 shares were available for future issuance under the 2015 Equity Incentive Plan.

The number of shares available for grant pursuant to Awards under the 2015 Equity Incentive Plan is referred to as the "Available Shares". If an Award is forfeited, canceled, or if any Option terminates, expires or lapses without being exercised, the common stock subject to such Award will again be made available for future grant. However, shares that are used to pay the exercise price of an Option or that are withheld to satisfy the Participant's tax withholding obligation will not be available for re-grant under the 2015 Equity Incentive Plan. If there is any change in the Company's corporate capitalization or structure, the Compensation Committee in its sole discretion may make substitutions or adjustments to the number of shares of common stock reserved for issuance under the 2015 Equity Incentive Plan, the number of shares covered by Awards then outstanding under the Plan, the limitations on Awards under the 2015 Equity Incentive Plan, the exercise price of outstanding Options and such other equitable substitution or adjustments as it may determine appropriate.

The 2015 Equity Incentive Plan will have a term of ten years and no further Awards may be granted under the 2015 Equity Incentive Plan after that date.

Awards Available for Grant

The Compensation Committee may grant awards of Non-Qualified Stock Options, Incentive Stock Options, Stock Appreciation Rights, Restricted Stock Awards, Restricted Stock Units, Stock Bonus Awards, Performance Compensation Awards (including cash bonus awards) or any combination of the foregoing, as each type of award is described in the 2015 Equity Incentive Plan. Notwithstanding, the Compensation Committee may not grant to any one person in any one calendar year awards (i) for more than 50% of the Available Shares in the aggregate or (ii) payable in cash in an amount exceeding $10 million in the aggregate.

Options

The Compensation Committee will be authorized to grant Options to purchase common stock that are either "qualified," meaning they are intended to satisfy the requirements of Code Section 422 for Incentive Stock Options, or "non-qualified," meaning they are not intended to satisfy the requirements of Section 422 of the Code. Options granted under the 2015 Equity Incentive Plan will be subject to the terms and conditions established by the Compensation Committee. Under the terms of the 2015 Equity Incentive Plan, unless the Compensation Committee determines otherwise in the case of an Option substituted for another Option in connection with a corporate transaction, the exercise price of the Options will not be less than the fair market value (as determined under the Plan) of the shares of common stock on the date of grant. Options granted under the 2015 Equity Incentive Plan will be subject to such terms, including the exercise price and the conditions and timing of exercise, as may be determined by the Compensation Committee and specified in the applicable award agreement. The maximum term of an Option granted under the 2015 Equity Incentive Plan will be ten years from the date of grant (or five years in the case of an Incentive Stock Option granted to a 10% stockholder). Payment in respect of the exercise of an Option may be made in cash or by check, by surrender of unrestricted shares of common stock (at their fair market value on the date of exercise) that have been held by the participant for any period deemed necessary by the Company's accountants to avoid an additional compensation charge or have been purchased on the open market, or the Compensation Committee may, in its discretion and to the extent permitted by law, allow such payment to be made through a broker-assisted cashless exercise mechanism, a net exercise method, or by such other method as the Compensation Committee may determine to be appropriate.

Stock Appreciation Rights

The Compensation Committee will be authorized to award Stock Appreciation Rights ("SARs") under the 2015 Equity Incentive Plan. SARs will be subject to such terms and conditions as established by the Compensation Committee. A SAR is a contractual right that allows a participant to receive, either in the form of cash, shares or any combination of cash and shares, the appreciation, if any, in the value of a share over a certain period of time. A SAR granted under the 2015 Equity Incentive Plan may be granted in tandem with an option and SARs may also be awarded to a participant independent of the grant of an

Option. SARs granted in connection with an Option shall be subject to terms similar to the Option which corresponds to such SARs. SARs shall be subject to terms established by the Compensation Committee and reflected in the award agreement.

Restricted Stock

The Compensation Committee will be authorized to award Restricted Stock under the 2015 Equity Incentive Plan. Unless otherwise provided by the Compensation Committee and specified in an award agreement, restrictions on Restricted Stock will lapse after three years of service with the Company. The Compensation Committee will determine the terms of such Restricted Stock awards. Restricted Stock are shares of common stock that generally are non-transferable and subject to other restrictions determined by the Compensation Committee for a specified period. Unless the Compensation Committee determines otherwise or specifies otherwise in an award agreement, if the participant terminates employment or services during the restricted period, then any unvested restricted stock will be forfeited.

Restricted Stock Unit Awards

The Compensation Committee will be authorized to award Restricted Stock Unit awards. Unless otherwise provided by the Compensation Committee and specified in an award agreement, Restricted Stock Units will vest after three years of service with the Company. The Compensation Committee will determine the terms of such Restricted Stock Units. Unless the Compensation Committee determines otherwise or specifies otherwise in an award agreement, if the participant terminates employment or services during the period of time over which all or a portion of the units are to be earned, then any unvested units will be forfeited. At the election of the Compensation Committee, the participant will receive a number of shares of common stock equal to the number of units earned or an amount in cash equal to the fair market value of that number of shares at the expiration of the period over which the units are to be earned or at a later date selected by the Compensation Committee.

Stock Bonus Awards

The Compensation Committee will be authorized to grant awards of unrestricted shares of common stock or other Awards denominated in shares of common stock, either alone or in tandem with other Awards, under such terms and conditions as the Compensation Committee may determine.

Performance Compensation Awards

The Compensation Committee will be authorized to grant any award under the 2015 Equity Incentive Plan in the form of a Performance Compensation Award exempt from the requirements of Section 162(m) of the Code by conditioning the vesting of the Award on the attainment of specific performance criteria of the Company and/or one or more Affiliates, divisions or operational units, or any combination thereof, as determined by the Compensation Committee. The Compensation Committee will select the performance criteria based on one or more of the following factors: (i) revenue; (ii) sales; (iii) profit (net profit, gross profit, operating profit, economic profit, profit margins or other corporate profit measures); (iv) earnings (EBIT, EBITDA, earnings per share, or other corporate profit measures); (v) net income (before or after taxes, operating income or other income measures); (vi) cash (cash flow, cash generation or other cash measures); (vii) stock price or performance; (viii) total stockholder return (stock price appreciation plus reinvested dividends divided by beginning share price); (ix) economic value added; (x) return measures (including, but not limited to, return on assets, capital, equity, investments or sales, and cash flow return on assets, capital, equity, or sales); (xi) market share; (xii) improvements in capital structure; (xiii) expenses (expense management, expense ratio, expense efficiency ratios or other expense measures); (xiv) business expansion or consolidation (acquisitions and divestitures); (xv) internal rate of return or increase in net present value; (xvi) working capital targets relating to inventory and/or accounts receivable; (xvii) inventory management; (xviii) service or product delivery or quality; (xix) customer satisfaction; (xx) employee retention; (xxi) safety standards; (xxii) productivity measures; (xxiii) cost reduction measures; and/or (xxiv) strategic plan development and implementation.

Transferability

Each award may be exercised during the participant's lifetime only by the participant or, if permissible under applicable law, by the participant's guardian or legal representative and may not be otherwise transferred or encumbered by a participant other than by will or by the laws of descent and distribution. The Compensation Committee, however, may permit awards (other than Incentive Stock Options) to be transferred to family members, a trust for the benefit of such family members, a partnership or limited liability company whose partners or stockholders are the participant and his or her family members or anyone else approved by it.

Amendment

The 2015 Equity Incentive Plan will have a term of ten years. The Company's Board of Directors may amend, suspend or terminate the 2015 Equity Incentive Plan at any time; however, shareholder approval to amend the 2015 Equity Incentive Plan may be necessary if the law or SEC so requires. No amendment, suspension or termination will impair the rights of any Participant or recipient of any award without the consent of the Participant or recipient.

Effective as of January 1, 2017, the 2015 Equity Incentive Plan was amended and restated to increase the permissible tax withholding on Awards in the form of common stock from the minimum statutory requirement to the maximum individual statutory rate.

Change in Control

Except to the extent otherwise provided in an award, in the event of a Change in Control, all outstanding Options and equity awards (other than performance compensation awards) issued under the 2015 Equity Incentive Plan will become fully vested and performance compensation awards will vest, as determined by the Compensation Committee, based on the level of attainment of the specified performance goals. In general, the Compensation Committee may, in its discretion, cancel outstanding awards and pay the value of such awards to the participants in connection with a Change in Control. The Compensation Committee can also provide otherwise in an award under the 2015 Equity Incentive Plan. For purposes of the 2015 Equity Incentive Plan, unless an award agreement states otherwise or contains a different definition, "Change in Control" shall be deemed to occur upon:

(i) a tender offer (or series of related offers) shall be made and consummated for the ownership of 50% or more of the outstanding voting securities of the Company, unless as a result of such tender offer more than 50% of the outstanding voting securities of the surviving or resulting corporation or entity shall be owned in the aggregate by (A) the shareholders of the Company (as of the time immediately prior to the commencement of such offer), or (B) any employee benefit plan of the Company or its subsidiaries, and their affiliates;

(ii) the Company shall be merged or consolidated with another corporation, unless as a result of such merger or consolidation more than 50% of the outstanding voting securities of the surviving or resulting corporation or entity shall be owned in the aggregate by (A) the shareholders of the Company (as of the time immediately prior to such transaction); provided, that a merger or consolidation of the Company with another company which is controlled by persons owning more than 50% of the outstanding voting securities of the Company shall constitute a Change in Control unless the Compensation Committee, in its discretion, determine otherwise, or (B) any employee benefit plan of the Company or its subsidiaries, and their affiliates;

(iii) the Company shall sell substantially all of its assets to another entity that is not wholly owned by the Company, unless as a result of such sale more than 50% of such assets shall be owned in the aggregate by (A) the shareholders of the Company (as of the time immediately prior to such transaction), or (B) any employee benefit plan of the Company or its subsidiaries, and their affiliates;

(iv) a Person, as defined in the 2015 Equity Incentive Plan, shall acquire 50% or more of the outstanding voting securities of the Company (whether directly, indirectly, beneficially or of record), unless as a result of such acquisition more than 50% of the outstanding voting securities of the surviving or resulting corporation or entity shall be owned in the aggregate by (A) the shareholders of the Company (as of the time immediately prior to the first acquisition of such securities by such Person), or (B) any employee benefit plan of the Company or its subsidiaries, and their affiliates; or

(v) the individuals who, as of the date hereof, constitute the members of the Board (the "Current Board Members") cease, by reason of a financing, merger, combination, acquisition, takeover or other non-ordinary course transaction affecting the Company, to constitute at least a majority of the members of the Board unless such change is approved by the Current Board Members.

Option Exercises and Stock Vested

The following information sets forth stock options exercised by, and stock vested for, the executive officers during the year ended December 31, 2016:

	OPTION AWARDS		STOCK AWARDS	
Name	Number of Shares Acquired on Exercise (#)	Value Realized on Exercise ($)	Number of Shares Acquired on Vesting (#)	Value Realized on Vesting ($)
Joseph A. D'Amato	—	—	4,989	139,591
Laurette J. Pitts	—	—	525	18,557
Charles Degliomini	—	—	525	18,534
Nanette L. Horner	—	—	525	18,557

Pension Benefits

None of our employees participates in or has account balances in qualified or non-qualified defined benefit plans sponsored by us. Our Compensation Committee may elect to adopt qualified or non-qualified benefit plans in the future if it determines that doing so is in the Company's best interests.

Non qualified Deferred Compensation

None of our employees participates in or has account balances in non-qualified defined contribution plans or other non-qualified deferred compensation plans maintained by us. Our Compensation Committee may elect to provide our officers and other employees with non-qualified defined contribution or other non-qualified deferred compensation benefits in the future if it determines that doing so is in the Company's best interests.

Deferred Compensation Plan

The Company adopted a deferred compensation plan (the "Deferred Compensation Plan"), which is effective on January 1, 2017. The Deferred Compensation Plan is a non-qualified deferred compensation plan under which eligible participants may elect to defer the receipt of current compensation. Eligible participants include select employees of the Company, including its executive officers. Pursuant to the Deferred Compensation Plan and subject to applicable tax laws, participants may elect to defer up to 50% of their base salary and up to 100% of any cash bonus. In addition to elective deferrals, the Deferred Compensation Plan permits the Company to make discretionary contributions. Participants may elect to receive payment of their vested account balances in a single cash payment or in annual installments for a period of five, 10 or 15 years. Payments will be made or commence upon the earliest of a participant's separation from service, death or disability. If a participant so elects, payments will be deferred until a fixed and determinable date.

The obligations incurred by the Company under the Deferred Compensation Plan will be unsecured general obligations of the Company to pay the compensation deferred in accordance with the terms of the Deferred Compensation Plan and will rank equally with other unsecured and unsubordinated indebtedness of the Company. Because the Company has subsidiaries, the right of the Company, and hence the right of creditors of the Company (including eligible participants in the Deferred Compensation Plan), to participate in a distribution of the assets of a subsidiary upon its liquidation or reorganization or otherwise, necessarily is subject to the prior claims of creditors of the subsidiary, except to the extent that claims of the Company itself as a creditor may be recognized.

Grants of Plan-Based Awards in 2016

Name	Grant Date	Estimated Future Payouts Under Non-Equity Incentive Plan Awards			Estimated Future Payouts Under Equity Incentive Plan Awards			All Other Stock Awards: Number of Shares of Stocks or Units (#)	All Other Option Awards: Number of Securities Underlying Options (#)	Exercise or Base Price of Option Awards ($/ share)	Closing stock price on Award date ($/ share)	Grant Date Fair Value of Stock and Option Awards
		Threshold ($)	Target ($)	Maximum ($)	Threshold (#)	Target (#) (1)	Maximum (#)					
Joseph A. D'Amato	8/2/2016	—	—	—	—	12,500	—	—	—	—	$16.40	$205,000

(1) The stock awards disclosed in this item consists of 12,500 issued under our 2005 Equity Incentive Plan, of which one-half vested on August 2, 2016 and the remaining 6,250 shares vest on August 2, 2018. The awards are subject to earlier vesting in the event of a change in control of the Company (as defined in the award letters).

Potential Payments Under Severance/Change in Control Arrangements

The table below sets forth potential payments payable to our current executive officers in the event of a termination of employment under various circumstances. For purposes of calculating the potential payments set forth in the table below, we have assumed that (i) the date of termination was December 31, 2016 and (ii) the stock price was $22.75, which was the closing market price of our common stock on December 31, 2016, the last business day of the 2016 fiscal year.

Name	If Company Terminates Executive Without Cause or Executive Resigns with Good Reason	Termination Following a Change in Control without Cause or Executive Resigns with Good Reason
Emanuel R. Pearlman		
Cash Payment	$—	$—
Total		
Joseph A. D'Amato		
Cash Payment	$1,262,500	$1,973,438
Total	$1,262,500	$1,973,438
Laurette J. Pitts		
Cash Payment	$545,000	$772,500
Total	$545,000	$772,500
Charles Degliomini		
Cash Payment	$565,000	$792,500
Total	$565,000	$792,500
Nanette L. Horner		
Cash Payment	$500,000	$727,500
Total	$500,000	$727,500

For each of our executive officers, in their employment agreements the term "change in control" shall be deemed to have occurred if:

i. a tender offer (or series of related offers) shall be made and consummated for the ownership of 50% or more of the outstanding voting securities of the Company, unless as a result of such tender offer more than 50% of the outstanding voting securities of the surviving or resulting corporation shall be owned in the aggregate by the shareholders of the Company (as of the time immediately prior to the commencement of such offer), any employee benefit plan of the Company or its Subsidiaries, and their affiliates;

ii. the Company shall be merged or consolidated with another corporation, unless as a result of such merger or consolidation more than 50% of the outstanding voting securities of the surviving or resulting corporation shall be owned in the aggregate by the shareholders of the Company (as of the time immediately prior to such transaction), any employee benefit plan of the Company or its Subsidiaries, and their affiliates;

iii. the Company shall sell substantially all of its assets to another corporation that is not wholly owned by the Company, unless as a result of such sale more than 50% of such assets shall be owned in the aggregate by the shareholders of the Company (as of the time immediately prior to such transaction), any employee benefit plan of the Company or its Subsidiaries and their affiliates;

iv. a Person (as defined below) shall acquire 50% or more of the outstanding voting securities of the Company (whether directly, indirectly, beneficially or of record), unless as a result of such acquisition more than 50% of the outstanding voting securities of the surviving or resulting corporation shall be owned in the aggregate by the shareholders of the Company (as of the time immediately prior to the first acquisition of such securities by such Person), any employee benefit plan of the Company or its Subsidiaries, and their affiliates; or

v. the individuals who, as of the date hereof, constitute the members of the Board (the “Current Board Members”) cease, by reason of a financing, merger, combination, acquisition, takeover or other non-ordinary course transaction affecting the Company, to constitute at least a majority of the members of the Board unless such change is approved by the Current Board Members.

Compensation Discussion and Analysis

Objectives of Our Compensation Program

Our compensation programs are intended to encourage executives and other key personnel to create sustainable growth in value for our stockholders. In particular, the objectives of our programs are to:

- attract, retain, and motivate superior talent;
- ensure that compensation is commensurate with our performance and stockholder returns;
- provide performance awards for the achievement of strategic objectives that are critical to our long term growth; and
- ensure that our executive officers and key personnel have financial incentives to achieve sustainable growth in stockholder value.

Executive Compensation Decisions--The Role of the Compensation Committee, the Chief Executive Officer and Advisory Vote on Executive Compensation

The Compensation Committee is responsible for evaluating and approving the compensation of our executive officers. The Compensation Committee considers recommendations from our Chief Executive Officer with respect to executive compensation matters, except regarding his own compensation. Although the annual advisory shareholder vote on executive compensation is non-binding, the Committee has considered, and will continue to consider, the outcome of this vote each year when making compensation decisions for our Chief Executive Officer and other named executive officers. At our annual meeting of shareholders held on November 1, 2016, approximately 99.8% of the shareholders who voted on the "say-on-pay" proposal approved the compensation of our named executive officers.

Our Executive Compensation Program and Risk

We do not believe that our compensation programs are structured to reward inappropriate risk-taking, and have concluded that our compensation policies and practices are not reasonably likely to result in a material adverse effect on our businesses, for several reasons, including the following:

- We provide a mix of variable performance-based annual cash compensation (under our senior executive bonus pool plan), fixed cash compensation in the form of base salaries, and long-term equity compensation in the form of equity awards. We believe this combination of variable and fixed cash compensation and a long-term equity interest which vest over time, provides appropriate incentives and rewards management, while at the same time encourages appropriate, but not excessive, levels of risk assumption.

- The design of our compensation programs, including the variety of performance criteria established under our plans, encourages executives to remain focused on both the short-term and long-term success of the Company's operational and development objectives; as a result, any incentive to take short-term risks is mitigated by the necessity for us to achieve success and maintain shareholder value over the long-term. In this regard, a portion of compensation is delivered to executives in the form of an annual bonus, and a portion of the compensation of our senior executives is based on meeting goals relating to the Development Projects.

- A portion of compensation to our senior executives is delivered through the use of equity awards, which generally vest after the Casino Project is complete and open to the public. The Compensation Committee believes that these equity incentive awards focus our executives on the long-term success of the Company, align their interests with those of our shareholders and, because of the multi-year vesting feature, subject management to the long-term consequences of risks undertaken to achieve short-term objectives.

Determination of Compensation Levels

In setting compensation levels, including bonus eligibility levels for our senior executives, under our performance bonus plan, and the mix of compensation for fiscal 2016, the Compensation Committee considered several factors. These include cash bonuses based on the Company's progress with the construction of the Casino Project and the planning and design of the Entertainment Village Project and Golf Course Project, existing employment agreements with individual executives, the desire to motivate the executives and align the compensation of the executives with the financial performance of the Company by providing incentives, and the Compensation Committee's subjective assessment of the individual's experience, responsibilities, management, leadership abilities and job performance. The Compensation Committee has, from time to time, used focused marketplace compensation analysis and reviewed compensation levels at companies of similar type and size for comparison purposes in connection with the recruitment and retention of our executive officers.

Elements of Our Executive Compensation Structure

Our compensation structure consists of two tiers of remuneration. The first tier consists of base pay, and retirement, health, and welfare benefits. The second tier consists of both short- and long-term incentive compensation.

Base Pay

Base compensation for each of our Named Executive Officers has been established pursuant to their respective employment agreement with the Company. Base pay and benefits are designed to be sufficiently competitive to attract and retain world class executives. In the past, the Compensation Committee has retained the discretion to review executive officers' base pay, and to make increases based on executive performance and market norms. The Compensation Committee has also recommended increases when executives have been promoted, or their responsibilities have otherwise been expanded.

Equity-based Compensation

Equity-based compensation is designed to provide incentives to our executive officers to build stockholder value over the long-term by aligning their interests with the interest of stockholders. Since 2005, we have granted equity-based awards in the form of restricted stock and options, as the Compensation Committee determined this was an effective vehicle for the motivation and retention of our executive officers.

On March 16, 2016, Mr. Pearlman was granted 75,000 shares of restricted stock under the 2015 Equity Incentive Plan, 25% of such shares, or 18,750 shares, will vest annually over a four-year period ending March 16, 2020. The shares are subject to immediate vesting in the event that (i) Mr. Pearlman is removed from the Board of Directors other than for cause, (ii) he is not renominated by Kien Huat Realty III Limited to stand for election to the Board,or (iii) a Change in Control (as defined in the award) has occurred.

On August 2, 2016, Mr. D'Amato was granted 12,500 shares of restricted stock under the 2015 Equity Incentive Plan, of which 6,250 shares vested immediately on August 2, 2016 and the remaining 6,250 shares will vest on August 2, 2018. The award is subject to earlier vesting in the event of a Change in Control (as defined in the award).

The Compensation Committee believes that the Company generally benefits from the retention and risk mitigation elements provided by a multi-year vesting period and has determined that delayed vesting based on the opening of the Casino Project to the public aligns an executive's compensation interests with the longer-term business strategies and tactics of the Company over the vesting period. The Committee also believes that the vesting over a multiple-year period relating to the opening of the Casino Project to the public reduces the motivation to engage in short-term strategies that may increase the Company's share price in the near term but may not create the best foundation for maximizing long-term stockholder value. The long-term vesting requirement is therefore also considered a disincentive to excessive risk taking by management as any adverse consequences of such risks would be reflected in the value of the equity awards by the time those awards vest. Accordingly, all restricted share awards granted to executives in 2016 reflect a multi-year vesting period tied to the opening of the Casino Project to the public.

In September 2015, the Board approved and, in November 2015, stockholders approved, the 2015 Equity Incentive Plan, pursuant to which any future equity incentive awards will be made to the Named Executive Officers. The 2015 Equity Incentive Plan provided for an aggregate of 952,498 shares of common stock to be available for Awards. Subject to adjustments based on the terms of the 2015 Equity Incentive Plan, on the Trigger Date, the maximum shares of common stock available for Awards were to automatically increase by the lesser of: (i) 1,633,209 shares of common stock; (ii) such number of shares as would increase the aggregate number of shares of common stock available for Awards to 10% of the issued and outstanding shares of common stock as of the Trigger Date; and (iii) such number of shares of common stock as the Compensation Committee would otherwise determine. On March 8, 2016, pursuant to the terms of the 2015 Equity Incentive Plan, the Board of Directors determined to increase the number of shares available for grant under such plan by 1,663,209 shares for a total amount of shares available for grants of 2,600,707. Such change was effective as of March 20, 2016. At December 31, 2016, a total of 2,501,309 shares were available for future issuance under the 2015 Equity Incentive Plan.

The Compensation Committee may grant awards of Non-Qualified Stock Options, Incentive Stock Options, Stock Appreciation Rights, Restricted Stock Awards, Restricted Stock Units, Stock Bonus Awards, Performance Compensation Awards (including cash bonus awards) or any combination of the foregoing.

The Compensation Committee believes that equity-based compensation provides an incentive that focuses the executive' attention on managing our Company from the perspective of an owner with an equity stake in the business. In determining the amount of equity-based compensation to be awarded to our named executive officers, the Compensation Committee takes into consideration, among other things, the level of the officer's responsibility, performance of the officer, other compensation elements and the amount of previous equity grants awarded to the individual. In addition, with respect to recruiting an executive officer to join our Company, the amount of equity consideration may be negotiated to reflect the amount necessary to hire the desired person. The size of such awards would be based on the Compensation Committee view on the prospective officer's potential to have an impact on our profitability, growth and financial position.

Cash Bonus Pool for Senior Executives

The Board determined to set aside $625,000 for possible award to Mr. Pearlman, Mr. D’Amato, Ms. Pitts, Ms. Horner, Mr. Degliomini and Mr. Keith Kabeary with respect to the fiscal year ended December 31, 2016. Bonuses to the eligible officers named will be determined at the discretion of the Compensation Committee.

After the conclusion of fiscal 2016 and the preparation of the Company's audited financial statements, the Compensation Committee held meetings to consider the extent to pay bonuses to the senior executives. The 2016 bonuses for the senior executives were discretionary and based primarily upon a subjective analysis by the Compensation Committee of the individual performance of each senior executive. Awards were made pursuant to the Bonus Plan in the first quarter of the current fiscal year and are reflected in the Summary Compensation Table above.

Director Compensation

Directors who are also our officers are not separately compensated for their service as directors. Our non-employee directors received the following aggregate amounts of compensation for 2016:

Name	Fees earned or paid in cash ($)	Restricted stock awards ($) (1)	Other compensation ($)	Total ($)
Emanuel R. Pearlman	303,000 (2)	$909,000	$0	$1,212,000
Nancy Palumbo	120,000 (3)	58,800		178,800
Gregg Polle	143,341 (4)	58,800		202,141
James Simon	40,000 (5)	49,140	80,000 (5)	169,140
Edmund Marinucci	127,508 (6)	58,800		186,308
Keith Horn	68,333 (7)	95,093		163,426

(1) 3,000 shares, with a grant date of November 2, 2016, were issued to each outside Director under the Company's 2015 Equity Incentive Plan and 75,000 shares, with a grant date of March 16, 2016, were issued to Emanuel Pearlman under the Company's 2015 Equity Incentive Plan. Restricted stock amount is equal to the grant date fair value of the grants.

(2) Mr. Pearlman served as a non-employee director until May 31, 2016, whereupon he became the Executive Chairman of the Board of Directors and a Company employee. Consists of (i) $25,000 annual cash compensation for non-employee directors; (ii) $5,000 for service on the Audit Committee; (iii) $5,000 for service on the Compensation Committee; (iv) $5,000 for service on the Corporate Governance and Nominations Committee; (v) $5,000 for service on the Regulatory Compliance Committee; (vi) $24,000 for service on the Strategic Development Committee and an additional $24,000 for acting as Chairman of the Strategic Development Committee; (vii) $130,000 additional compensation for the Chairman of the Strategic Development Committee for the significant amount of time spent in supporting and facilitating the Company’s pursuit of the Casino Project; and (viii) $80,000 for acting as Chairman of the Board.

(3) Consists of: (i) $50,000 annual cash compensation for non-employee directors; (ii) $10,000 for service on the Audit Committee; (iii) $10,000 for service on the Compensation Committee; (iv) $10,000 for service on the Regulatory Compliance Committee; (v) $10,000 for service on the Corporate Governance and Nominations Committee; (vi) $15,000 for acting as Chairman of the Compensation Committee; and (vii) $15,000 for acting as Chairman of the Regulatory Compliance Committee.

(4) Consists of: (i) $50,000 annual cash compensation for non-employee directors; (ii) $16,667 for acting as Chairman of the Audit Committee from January 1, 2016 to May 31, 2016; (iii) $48,000 for service on the Strategic development Committee; (iv) $10,000 for service on the Audit Committee; (v) $5,833 for service on the Compensation Committee from June 1, 2016 to December 31, 2016; (vi) $5,833 for service on the Corporate Governance Committee from June 1, 2016 to December 31, 2016; (vii) $4,508 for service on the Regulatory Compliance Committee from July 19, 2016 to December 31, 2016; and (vii) $2,500 for service as Lead Director from November 1, 2016 to December 31, 2016.

(5) Mr. Simon resigned his position as Director on July 19, 2016. Consists of: (i) $25,000 annual cash compensation for non-employee directors; (ii) $5,000 for service on the Audit Committee; (iii) $5,000 for service on the Compensation Committee; (iv) $5,000 for service on the Regulatory Compliance Committee; and (v) $80,000 for continued availability to consult with the Company following Mr. Simon's resignation.

(6) Consists of: (i) $50,000 annual cash compensation for non-employee directors; (ii) $10,000 for service on the Corporate Governance and Nominations Committee; (iii) $4,508 for service on the Compensation Committee from June 1, 2016 to December 31, 2016; (iv) $15,000 for acting as Chairman of the Corporate Governance and Nominations Committee; and (v) $48,000 for service on the Strategic Development Committee.

(7) Mr. Horn became a director on April 19, 2016. Consists of: (i) $33,333 annual cash compensation for non-employee directors; (ii) $5,833 for service on the Audit Committee; (iii) $5,833 for service on the Regulatory Compliance Committee; and (iv) $23,334 for acting as Chairman of the Audit Committee.

Cash Compensation

Each non-employee member of the Board receives annual cash compensation for non-employee directors of $50,000. The chairperson of (i) the Audit Committee receives annual compensation of $40,000, (ii) the Compensation Committee receives annual compensation of $15,000, (iii) the Corporate Governance and Nominations Committee receives annual compensation of $15,000; (iv) the Regulatory Compliance Committee receives annual compensation of $15,000 and (v) the Special Committee receives annual compensation of $48,000. Annual compensation for each member of the Audit Committee, Compensation Committee, Corporate Governance and Nominations Committee and Regulatory Compliance Committee is $10,000 per committee, including for the chairperson of such committee. Annual compensation for each member of the Special Committee is $48,000 per member. Annual compensation for the Chairman of the Board was $160,000. Compensation for the Lead Director is $10,000 annually. Compensation for the Chairman of the Special Committee for the significant amount of time spent in supporting and facilitating the Company's pursuit of the Casino Project was $260,000 annually.

Stock Compensation

In November 2016, the non-employee directors of the Company received an annual grant of 3,000 shares of restricted stock, with such shares vesting on January 5, 2018. Further, in March 2016, Mr. Pearlman was granted 75,000 shares of restricted stock, 25% of such shares, or 18,750 shares will vest annually over a four-year period ending March 16, 2020. The shares are subject to immediate vesting in the event that (i) Mr. Pearlman is removed from the Board of Directors other than for cause, (ii) he is not renominated by Kien Huat to stand for election to the Board, or (iii) a Change in Control (as defined in the award) has occurred.

In November 2015, the non-employee directors of the Company received an annual grant of 3,000 shares of restricted stock, with such shares vesting on January 6, 2017. Further, in May 2015, Mr. Pearlman was granted 50,000 shares of restricted stock, 50% on the date on which the NYSGC authorizes the opening of the Casino Project to the public ("Casino Date") and 50% as to the six-month anniversary of the Casino Date; immediately vesting in the event (i) Mr. Pearlman is removed from the Board other than for cause, (ii) he is not renominated by Kien Huat Realty III Limited to stand for election to the Board or (iii) a Change in Control (as defined in the award) has occurred.

Compensation Committee Interlocks and Insider Participation

None of our executive officers serves as a member of the Compensation Committee of our board of directors, or other committee serving an equivalent function. None of the members of our Compensation Committee has ever been our employee or one of our officers.

Compensation Committee Report

We have reviewed the Compensation Discussion and Analysis required by Item 402(b) of Regulation S-K with the Company's management. Based on such review and discussion, we have recommended to the Board of Directors that the Compensation Discussion and Analysis be included in this Proxy Statement and incorporated by reference into the Company's Annual Report on Form 10-K for the fiscal year ended December 31, 2016.

Compensation Committee
Nancy Palumbo
Gregg Polle
Edmund Marinucci

Item 12. Security Ownership of Certain Beneficial Owners and Management and Related Stockholder Matters.

The following table sets forth information concerning beneficial ownership of our capital stock outstanding at March10, 2017 by (i) each stockholder known to be the beneficial owner of more than five percent of any class of our voting securities then outstanding, (ii) each of our directors, (iii) each of our "named executive officers" as defined in Item 402(a)(3) of Regulation S-K promulgated under the Exchange Act, and (iv) our current directors and executive officers, as a group.

The information regarding beneficial ownership of our common stock has been presented in accordance with the rules of the Commission. Under these rules, a person may be deemed to beneficially own any shares of capital stock as to which such person, directly or indirectly, has or shares voting power or investment power, and to beneficially own any shares of our capital stock as to which such person has the right to acquire voting or investment power within 60 days through the exercise of any stock option or other right. The percentage of beneficial ownership as to any person as of a particular date is calculated by dividing (a) (i) the number of shares beneficially owned by such person plus (ii) the number of shares as to which such person has the right to acquire voting or investment power within 60 days by (b) the total number of shares outstanding as of such date, plus any shares that such person has the right to acquire from us within 60 days. Including those shares in the tables does not, however, constitute an admission that the named stockholder is a direct or indirect beneficial owner of those shares. Unless otherwise indicated, each person or entity named in the table has sole voting power and investment power (or shares that power with that person's spouse) with respect to all shares of capital stock listed as owned by that person or entity.

Name and Address of Beneficial Owner (1)	Common Stock Beneficially Owned			Series B Preferred Stock Beneficially Owned	
Directors	Shares		Percentage	Shares	Percentage
Edmund Marinucci	8,244	(2)	*	—	—
Joseph A. D'Amato	44,190	(3)	*	—	—
Nancy Palumbo	19,372	(4)	*	—	—
Emanuel R. Pearlman	157,351	(5)	*	—	—
Gregg Polle	19,176	(6)	*	—	—
Keith L. Horn	5,250	(7)	*	—	—
Current Officers					
Laurette J. Pitts	11,000	(10)	*	—	—
Charles Degliomini	15,525	(8)	*	—	—
Nanette L. Horner	13,691	(9)	*	—	—
Directors and Officers as a Group (9 people)	293,799	(11)	*	—	—
Stockholders					
Kien Huat Realty III Limited c/o Kien Huat Realty Sdn Bhd. 22nd Floor Wisma Genting Jalan Sultan Ismail 50250 Kuala Lumpur Malaysia	27,533,067	(12)	88.3%	—	—
Patricia Cohen 6138 S. Hampshire Ct. Windermere, FL 34786	—			44,258	100%

* less than 1%

(1) Unless otherwise indicated, the address of each stockholder, director, and executive officer listed above is Empire Resorts, Inc., c/o Monticello Casino and Raceway, Route 17B, P.O. Box 5013, Monticello, New York 12701.

(2) Consists of 3,622 shares of our common stock owned directly by Edmund Marinucci and options that are currently exercisable into 1,622 shares of our common stock and 3,000 shares of restricted stock issued pursuant to the Company's 2015 Equity Incentive Plan which currently have voting rights but do not vest until January 5, 2018.

(3) Consists of 12,940 shares of our common stock owned directly by Joseph A. D'Amato, and 31,250 shares of restricted stock pursuant to the Company's 2005 Equity Incentive Plan which currently have voting rights but are not vested. Of the unvested restricted stock, 6,250 shares vest on August 2, 2018, 12,500 shares vest on the date on which the

NYSGC authorizes the opening of the Casino Project to the public ("Casino Date") and 12,500 vest at the six month anniversary of the Casino Date; immediate vesting in the event of a Change in Control (as defined in the award).

(4) Consists of 14,372 shares of our common stock owned directly by Nancy Palumbo and options that are currently exercisable into 2,000 shares of our common stock and 3,000 shares of restricted stock issued pursuant to the Company's 2015 Equity Incentive Plan which currently have voting rights but do not vest until January 5, 2018.

(5) Consists of 30,351 shares of our common stock owned directly by Emanuel R. Pearlman, options that are currently exercisable into 2,000 shares of our common stock, 75,000 shares of restricted stock issued pursuant to the Company's 2015 Equity Incentive Plan which vest as to 18,750 shares on each of March 16, 2017, March 16, 2018, March 16, 2019 and March 16, 2020; and 50,000 shares of restricted stock issued pursuant to the Company's 2005 Equity Incentive Plan which currently have voting rights but vest as follows: 25,000 shares vest on the Casino Date and 25,000 vest at the six-month anniversary of the Casino Date; however, there is immediate vesting in the event (i) Mr. Pearlman is removed from the Board other than for cause, (ii) if he is not renominated by Kien Huat to stand for election to the Board, or (iii) upon a Change in Control (as defined in the award)

(6) Consists of 14,176 shares of our common stock owned directly by Gregg Polle, options that are currently exercisable into 2,000 shares of our common stock and 3,000 shares of restricted stock issued pursuant to the Company's 2015 Equity Incentive Plan which currently have voting rights but do not vest until January 5, 2018.

(7) Consists of 2,250 shares of our common stock owned directly by Keith Horn and 3,000 shares of restricted stock issued pursuant to the Company's 2015 Equity Incentive Plan which currently have voting rights but do not vest until January 5, 2018.

(8) Includes 525 shares of our common stock owned directly by Charles Degliomini, options that are currently exercisable into 5,000 shares of our common stock and 10,000 shares of restricted stock pursuant to the Company's 2005 Equity Incentive Plan which currently have voting rights but are not vested. Of the unvested restricted stock, 5,000 shares vest on the Casino Date and 5,000 vest at the six-month anniversary of the Casino Date; immediate vesting in the event of a Change in Control (as defined in the award).

(9) Consists of 3,691 shares of our common stock owned directly by Nanette Horner and 10,000 shares of restricted stock pursuant to the Company's 2005 Equity Incentive Plan which currently have voting rights but are not vested. Of the unvested restricted stock, 5,000 shares vest on the Casino Date and 5,000 vest at the six-month anniversary of the Casino Date; immediate vesting in the event of a Change in Control (as defined in the award).

(10) Consists of 1,000 shares of our common stock owned directly by Laurette Pitts and 10,000 shares of restricted stock pursuant to the Company's 2005 Equity Incentive Plan which currently have voting rights but are not vested. Of the unvested restricted stock, 5,000 shares vest on the Casino Date and 5,000 vest at the six-month anniversary of the Casino Date; immediate vesting in the event of a Change in Control (as defined in the award).

(11) Includes options held by directors and officers of the Company that are currently exercisable into an aggregate of 12,622 shares of our common stock, and 93,250 shares of restricted stock issued pursuant to the Company's 2015 Equity Incentive Plan which currently have voting rights but vest on the following dates: 12,000 shares vest on January 5, 2018, 18,750 shares vest on each of March 16, 2016, 2017, 2018 and 2019, 12,000 shares vest on January 5, 2018 and 6,250 shares vest on August 2, 2018. In addition, 105,000 shares of restricted stock pursuant to the Company's 2005 Equity Incentive Plan which currently have voting rights but are not vested, of which 52,500 shares vest on the Casino Date and 52,500 vest at the six-month anniversary of the Casino Date; immediate vesting in the event of a Change in Control (as defined in the award).

(12) Based solely on the Schedule 13D/A filed jointly by Kien Huat and Tan Sri Lim Kok Thay on February 18, 2016. Tan Sri Lim is a director of Kien Huat and Kien Huat is indirectly controlled by Tan Sri Lim. Tan Sri Lim and Kien Huat share voting and dispositive power over the equity securities. .

Item 13. Certain Relationships and Related Transactions, and Director Independence.

Investment Agreement with Kien Huat

On August 19, 2009, we entered into that certain investment agreement (the "Investment Agreement") with Kien Huat Realty III Limited ("Kien Huat"), pursuant to which we issued 6,901,208 shares of common stock, representing just under 50% of our voting power at the time. Under the terms of the Investment Agreement, Kien Huat is entitled to recommend three directors whom we are required to cause to be elected or appointed to our Board, subject to the satisfaction of all legal and governance requirements regarding service as a member of our Board and to the reasonable approval of the Governance Committee of the Board of Directors. In 2016, Kien Huat recommended Emanuel Pearlman, Gregg Polle and Edmund Marinucci for appointment to the Board of Directors pursuant to the Investment Agreement. Kien Huat will continue to be entitled to recommend three nominees for directors for so long as it owns at least 24% of our voting power outstanding at such time, after which the number of directors whom Kien Huat will be entitled to designate for election or appointment to the Board of Directors will be reduced proportionally to Kien Huat's percentage of ownership. Under the Investment Agreement, for so long as Kien Huat is entitled to designate nominees for directors to the Board, among other things, Kien Huat will have the right to nominate one of its nominees elected to serve as a director to serve as the Chairman of the Board, and Mr. Pearlman has been appointed to serve as Chairman of the Board pursuant to Kien Huat's recommendation. Until such time as Kien Huat ceases to own capital stock with at least 30% of our voting power outstanding at such time, the Board of Directors will be prohibited under the terms of the Investment Agreement from taking certain actions relating to fundamental transactions involving us and our subsidiaries and certain other matters without the affirmative vote of the directors nominated by Kien Huat.

Pursuant to the Investment Agreement, if any option or warrant outstanding as of the final closing under the Investment Agreement, or the first 200,000 granted to directors or officers who served in such capacity as of the final closing date under the Investment Agreement, are exercised, Kien Huat has the right (following notice of such exercise) to purchase an equal number of additional shares of our common stock as are issued upon such exercise at the exercise price for the applicable option or warrant (such rights the "Option Matching Rights"). Pursuant to the terms of the Investment Agreement, the Company is required to provide notice (an "Option Exercise Notice") of any exercise within five (5) business days, after which notice is received, Kien Huat is required to notify the Company of whether it decides to exercise such Option Matching Rights within ten (10) business days. The Company did not provide such notice to Kien Huat pursuant to the Investment Agreement. On December 31, 2015, the Company and Kien Huat entered into a letter agreement (the "OMR Letter Agreement") pursuant to which the parties agreed that, as a result of the Company's failure to provide the Option Exercise Notice, Kien Huat's right to elect to purchase an equal number of shares had not yet vested and would inure to Kien Huat's benefit only upon the Company's delivery of such Option Exercise Notice. To fulfill the Company's obligations pursuant to the Investment Agreement, pursuant to the OMR Letter Agreement, the Company provided the Option Exercise Notice as of December 31, 2015 for approximately 204,706 shares of common stock as required by the Investment Agreement. Kien Huat had ten (10) business days following the date on which the Company's Chief Compliance Officer provides written notice that Kien Huat is no longer unable to exercise the Option Matching Rights pursuant to the Company's Insider Trading Policy (the "Effective Date Notice") to elect whether to exercise such Option Matching Rights. On February 17, 2016, the Company provided the Effective Date Notice to Kien Huat regarding Kien Huat's election to exercise its Option Matching Rights. On February 17, 2016, Kien Huat declined to exercise the Option Matching Rights to purchase 204,706 shares of common stock.

2010 Kien Huat Loan Agreement and Conversion of 2010 Kien Huat Note

On November 17, 2010, Empire entered into a loan agreement (the "2010 Kien Huat Loan Agreement") with Kien Huat, pursuant to which the Company issued a convertible promissory note (the "2010 Kien Huat Note") in the original principal amount of $35.0 million, of which $17.4 million was outstanding as of December 31, 2015. On August 8, 2012, the Company and Kien Huat entered into Amendment No. 1 (the "First Amendment") to the 2010 Kien Huat Loan Agreement. Pursuant to the First Amendment, the maturity date of the 2010 Kien Huat Note was extended from May 17, 2013 to December 31, 2014. In consideration of the extension of the maturity date of the 2010 Kien Huat Note, effective as of the date of the First Amendment, the rate of interest was increased to 7.5% per annum from 5% per annum. In addition, the Company agreed to pay Kien Huat upon execution a one-time fee of $174,261, or 1% of the outstanding principal amount of the 2010 Kien Huat Note as of the date of the First Amendment.

On December 18, 2013, the Company and Kien Huat entered into Amendment No. 2 (the "Second Amendment") to the 2010 Kien Huat Loan Agreement. Pursuant to the Second Amendment, the maturity date of the 2010 Kien Huat Note was extended from December 31, 2014 to March 15, 2015. In consideration of the extension of the maturity date of the 2010 Kien

Huat Note, the Company agreed to pay Kien Huat a one-time fee of $25,000. In addition, the Company agreed to pay $20,000 of out-of-pocket legal fees and expenses incurred by Kien Huat.

On March 3, 2015, the Company and Kien Huat entered into Amendment No. 3 (the "Third Amendment") to the 2010 Kien Huat Loan Agreement. Pursuant to the Third Amendment, the maturity date of the 2010 Kien Huat Note was extended from March 15, 2015 to March 15, 2016. Additionally, if the Company was denied a Gaming Facility License for the Casino Project, it was to be deemed an Event of Default under the 2010 Kien Huat Loan Agreement. In consideration of the extension of the maturity date of the 2010 Kien Huat Note, the Company agreed to pay Kien Huat a one-time fee of $25,000 and an additional $20,000 of out-of-pocket legal fees and expenses incurred by Kien Huat.

Pursuant to the Kien Huat Commitment Letter (which is defined and discussed below), Kien Huat agreed to convert into common stock the 2010 Kien Huat Note in accordance with its terms upon the earlier to occur of (i) the closing of the January 2016 Rights Offering and (ii) the maturity of the 2010 Kien Huat Note, which was March 15, 2016. On February 17, 2016, upon consummation of the January 2016 Rights Offering, the 2010 Kien Huat Note was converted into 1,332,058 shares of common stock (the "Note Conversion").

We paid interest to Kien Huat pursuant to the 2010 Kien Huat Loan Agreement totaling approximately $4.1 million from November 2010 through March 31, 2014. Due to an inadvertent oversight, the Company did not withhold taxes due on interest payments from November 2010 through March 31, 2014, to Kien Huat, which is a foreign entity affiliate of ours, as required by the Internal Revenue Code of 1986, as amended. Kien Huat has reimbursed the Company for the taxes that were due on such interest payments, which are equal to 30% of the interest paid to Kien Huat, or approximately $1.2 million (the “Taxes Payable”). The total of the Taxes Payable and anticipated interest charges thereon is approximately $1.3 million.

The Taxes Payable amount has been remitted to the Internal Revenue Service (the "IRS") and was accepted by the IRS in the second quarter of fiscal year 2014. The interest on the Taxes Payable for fiscal year ending December 31, 2010 was paid and accepted by the IRS in the third quarter of fiscal year 2014 and no penalties were assessed.

The interest on the Taxes Payable for 2011-2013, which is estimated in the amount of $114,000, will be remitted to the IRS upon the IRS's request therefor. Based on the Company’s actions to correct such oversight, the Company believes that it is not probable that penalties would be due for the period of 2011-2013; however, if penalties were to be due to the IRS, the amount could be up to approximately $400,000. The Company has not adjusted its historical financial statements for any period prior to March 31, 2014, as the Company believes that the impact to previously issued financial statements is not material.

In March 2015, we received notification from the IRS that the interest and penalties on the Taxes Payable for 2011-2013 were approximately $154,000. We have filed an appeal of the penalties for 2011- 2013. At the conclusion of the appeal any amounts due will be remitted to the IRS upon the IRS's request. As of March 6, 2017, the Company resolved this matter with the IRS and no further action for the years noted above is necessary. The final result was not materially different from our current estimate.

2014 Rights Offering

On April 2, 2014, the Company commenced a rights offering of common stock to holders of its common stock and Series B Preferred Stock as of March 31, 2014 (the "April 2014 Rights Offering"). Upon completion of the April 2014 Rights Offering, the Company issued 427,776 shares of common stock and raised approximately $13.4 million. This includes 90,633 shares issued to holders upon exercise of their basic subscription rights, 302,526 shares issued to Kien Huat upon exercise of its basic subscription rights and 34,617 shares issued to holders upon exercise of their over-subscription rights in the April 2014 Rights Offering.

2015 Rights Offering

On January 5, 2015, the Company commenced the January 2015 Rights Offering of non-transferable subscription rights to holders of record of our common stock and Series B Preferred Stock as of January 2, 2015. In connection with the January 2015 Rights Offering, on January 2, 2015, the Company and Kien Huat entered into the January 2015 Standby Purchase Agreement. Pursuant to the January 2015 Standby Purchase Agreement, Kien Huat agreed to exercise in full its basic subscription rights granted in the January 2015 Rights Offering within 10 days of its grant. In addition, Kien Huat agreed it would exercise all rights not otherwise exercised by the other holders in an aggregate amount not to exceed $50 million. The January 2015 Rights Offering closed on February 6, 2015 and the Company received net proceeds of approximately $49.5 million. The Company issued a total of 1,408,451 shares of common stock at $35.50 per share. This includes 10,658 shares issued to holders upon exercise of their basic subscription and over-subscription rights and 864,360 shares issued to Kien Huat

upon exercise of its basic subscription rights. Kien Huat also acquired the remaining 533,433 shares not sold in the January 2015 Rights Offering pursuant to the January 2015 Standby Purchase Agreement. Pursuant to the January 2015 Standby Purchase Agreement, we paid Kien Huat a commitment fee of $250,000 and reimbursed Kien Huat for its expenses. in the amount of $40,000.

2016 Rights Offering

On January 4, 2016, the Company commenced the January 2016 Rights Offering of transferable subscription rights to holders of record of our common stock and Series B Preferred Stock as of January 4, 2016. The subscription rights were listed for trading on The Nasdaq Stock Market under the symbol "NYNYR" for the duration of the January 2016 Rights Offering. In connection with the January 2016 Rights Offering, on December 31, 2015, we and Kien Huat, our largest stockholder, entered into the January 2016 Standby Purchase Agreement. Pursuant to the January 2016 Standby Purchase Agreement, Kien Huat agreed to (i) exercise its basic subscription rights to acquire approximately $30 million of our common stock within 10 days of the commencement of the January 2016 Rights Offering with a closing proximate thereto and (ii) to exercise the remainder of its basic subscription rights prior to the expiration date of the January 2016 Rights Offering. In addition, Kien Huat agreed it would exercise all rights not otherwise exercised by the other holders in the January 2016 Rights Offering, which we refer to as the standby purchase, upon the same terms as other holders in an aggregate amount not to exceed $290 million. The January 2016 Rights Offering closed on February 17, 2016 and the Company received net proceeds of approximately $285.9 million. The Company issued a total of 20,138,888 shares of common stock at $14.40 per share. This includes 176,086 shares issued to holders upon exercise of their basic subscription and over-subscription rights and 13,136,817 shares issued to Kien Huat upon exercise of its basic subscription rights. Kien Huat also acquired the remaining 6,825,985 shares not sold in the January 2016 Rights Offering pursuant to the January 2016 Standby Purchase Agreement. Pursuant to the January 2016 Standby Purchase Agreement, we paid Kien Huat a commitment fee of $1,450,000 and reimbursed Kien Huat for its expenses. in the amount of $50,000.

Commitment Letter from Kien Huat

To support the Company's financing needs for the Development Projects, Kien Huat entered into a series of commitment letters with the Company, which was last amended on September 22, 2015 (as amended, the "Kien Huat Commitment Letter"). Pursuant to the Kien Huat Commitment Letter, Kien Huat committed to an equity investment in the Company in the aggregate amount of $375 million in support of the Development Projects, the redemption of the Series E Preferred Stock and for working capital purposes. Kien Huat has invested an aggregate of $340 million of such commitment pursuant to the January 2015 Standby Purchase Agreement and the January 2016 Standby Purchase Agreement. Kien Huat also agreed to participate in, and backstop, a follow-on rights offering on the same terms and conditions and at the same subscription price as the January 2016 Rights Offering, in an amount not to exceed $35 million (the "Follow-On Rights Offering").

Registration Rights

Pursuant to the terms of the Investment Agreement, on August 19, 2009, the Company entered into a Registration Rights Agreement with the Kien Huat (the “Registration Rights Agreement”). The Registration Rights Agreement provides, among other things, that Kien Huat may require that the Company file one or more “resale” registration statements, registering under the Securities Act of 1933, as amended, the offer and sale of all of the common stock issued or to be issued to Kien Huat pursuant to the Investment Agreement as well as any shares acquired by way of a share dividend or share split or in connection with a combination of such shares, recapitalization, merger, consolidation or other reorganization with respect to such shares. In addition, pursuant to the Kien Huat Commitment Letter, the Company agreed to register for resale all of the shares of common stock issued to Kien Huat in the 2015 Rights Offering and the 2016 Rights Offering, as well as the Follow-on Rights Offering, if any, as well as any other unregistered shares of common stock held by Kien Huat. On February 23, 2016, the Company filed a registration statement on Form S-3 (No. 333-309662) registering for resale all of the shares of common stock held by Kien Huat, which registration statement is currently pending with the Securities and Exchange Commission.

Kien Huat Letter Agreement

As a result of Kien Huat’s increased proportionate ownership following the consummation of the January 2016 Rights Offering and the Note Conversion, at the request of the Company, on February 17, 2016, Kien Huat and the Company entered into the Kien Huat Letter Agreement pursuant to which, during the period commencing on February 17, 2016 and ending on the earlier of (i) the three year anniversary of the closing of the Rights Offering and (ii) the one-year anniversary of the opening of the Casino Project, Kien Huat has agreed not to take certain actions with respect to the Company. In particular, during such time period, Kien Huat has agreed not to, and to cause the Kien Huat Parties not to, take certain actions in furtherance of a “going-private” transaction (as such term is defined in the Letter Agreement) involving the Company unless such transaction is

subject to the approval of (x) holders of a majority of the votes represented by the common stock, Series B Preferred Stock and any other capital stock of the Company entitled to vote together with the common stock in the election of the Board (other than any such capital stock owned by any Kien Huat Parties) and (x) either (A) a majority of disinterested members of the Board Board or (y) a committee of the Board composed of disinterested members of the Board. In addition, during such period, the Company and Kien Huat have agreed to cooperate to ensure that, to the greatest extent possible, the Board includes no fewer than three independent directors (the definition of independence as determined under the standards of The NASDAQ Stock Market or any other securities exchange on which the common stock of the Company is then listed).

Kien Huat Construction Loan Agreement

On October 13, 2016, Montreign Operating and Kien Huat entered into a loan agreement (the KH Construction Loan Agreement. Pursuant to the KH Construction Loan Agreement, Kien Huat agreed to make available to Montreign Operating up to an aggregate of $50 million of loans to pay the expenses of the Casino Project while the debt financing for the Development Projects was finalized. The term of the KH Construction Loan Agreement would expire on the earlier of (i) the consummation of financing in an amount no less than the remaining contract amount under the Casino Project construction contract and (ii) October 13, 2017. In connection with the closing of the Term Loan Facility and the Kien Huat Montreign Loan, on January 24, 2017, the KH Construction Loan Agreement expired on its terms without being utilized by Montreign Operating. Montreign paid Kien Huat a commitment fee of $500,000 upon execution of the KH Construction Loan. The commitment fee was capitalized and is included in Other Assets. It is being amortized over the life of the agreement.

Kien Huat Montreign Loan Agreement

On the Loan Closing Date, Kien Huat and Montreign Holding entered into the Kien Huat Montreign Loan Agreement, pursuant to which Montreign Holding obtained from Kien Huat a loan in the principal amount of $32.3 million, of which $32.0 million were used as a capital contribution to Montreign Operating for use towards the development and operating expenses of the Development Projects. The KH Montreign Loan shall mature on February 24, 2024, which Kien Huat Loan Maturity Date may be extended by Kien Huat in its sole discretion by up to an additional year.

The Kien Huat Montreign Loan bears interest at a rate of 12% per annum. Prior to the Kien Huat Loan Maturity Date, interest on the Kien Huat Montreign Loan shall accrue and be added to the Principal Indebtedness on each Interest Payment Date and shall thereafter be deemed to be part of the Principal Indebtedness. The Principal Indebtedness, including all interest due through the applicable Interest Payment Date and other amounts due under the KH Montreign Loan, shall be payable in cash on the Kien Huat Loan Maturity Date. Notwithstanding the foregoing, Montreign Holding shall be required to pay in cash to Kien Huat, at the end of any "accrual period" (as defined in Section 1275(a)(5) of the Code) ending after the fifth anniversary of the Loan Closing Date the aggregate amount by which (x) the sum of (i) the amount of accrued interest on the Kien Huat Montreign Loan that has been added to the Principal Indebtedness plus (ii) any other accrued but unpaid original issue discount (as determined under Section 163(i) of the Code) on the Kien Huat Montreign Loan from the closing date through the end of such accrual period, in each case that has not been paid in cash, exceeds (y) the product of (i) the "issue price" (as defined for purposes of the Code) and (ii) the "yield to maturity" (as defined for purposes of the Code). In addition to the interest payable on the Kien Huat Montreign Loan, Kien Huat was entitled to a commitment fee of one percent (1%), which fee was added to the Principal Indebtedness of the Kien Huat Montreign Loan. The Kien Huat Montreign Loan may be prepaid in full or in part at any time without premium or penalty.

The obligations of Montreign Holding under the Kien Huat Montreign Loan Agreement are secured by a pledge of all the membership interests of Montreign Holding by Empire. The Kien Huat Montreign Loan Agreement contains representations and warranties and affirmative covenants that are usual and customary, including representations, warranties and covenants that, among other things, restrict Montreign Holding's use of the proceeds of the Kien Huat Montreign Loan to expenses relating to the Projects. Obligations under the Kien Huat Montreign Loan Agreement may be accelerated upon certain customary events of default (subject to grace periods, as appropriate), including, among others, nonpayment of principal, interest or fees, breach of the affirmative covenants, and a default with respect to the payment of principal or interest under the Term Loan by Montreign Operating or acceleration of the Term Loan for any reason.

Moelis & Company

On December 9, 2013, the Company executed a letter agreement (the "Moelis Letter Agreement") pursuant to which it engaged Moelis & Company LLC ("Moelis") to act as its financial advisor in connection with the Casino Project. Pursuant to the Moelis Letter Agreement, we agreed to pay Moelis a retainer fee in the aggregate amount of $250,000, of which $150,000 was payable upon execution and $100,000 of which was paid within 90 days after execution. In the event a financing is consummated, the Moelis Letter Agreement contemplates additional transaction-based fees would be earned by Moelis.

During 2014, we paid Moelis approximately $44,000 for professional services and travel.

During 2015, we paid Moelis approximately $428,000 for professional services, travel and expenses.

At the close of the January 2016 Rights Offering Moelis was paid approximately $2.1 million for financial advisory services in connection to with the Casino Project, pursuant to the Moelis Letter Agreement.

On January 24, 2017, Moelis was paid approximately $2.5 million for financial advisory services in connection with the Casino Project pursuant to the Moelis Letter Agreement.

In March 2017, Montreign Operating entered into an engagement agreement with Moelis (the "Moelis-Montreign Engagement Agreement") pursuant to which Moelis will act as exclusive financial advisor to Montreign Operating. Pursuant to the Moelis-Montreign Engagement Agreement, Moelis is entitled to an advisory fee of $100,000, which is payable upon execution, and the reimbursement of expenses up to $75,000. The Moelis-Montreign Engagement Agreement will automatically terminate on December 31, 2017 unless either party terminates earlier.

Gregg Polle, a director of the Company, is a Managing Director of Moelis. Mr. Polle refrained from participating in the discussion of the Moelis Letter Agreement and the Moelis-Montreign Engagement Agreement and the determination of whether to enter into such agreements.

Audit Committee Review

Our audit committee charter provides that the Audit Committee will review and approve all transactions between the Company and its officers, directors, director nominees, principal stockholders and their immediate family members. We expect that any such transactions will be on terms no less favorable to it than it could obtain from unaffiliated third parties.

Item 14. Principal Accounting Fees and Services.

Our principal accountant for the audit and review of our annual and quarterly financial statements was Ernst & Young LLP. The following table shows the fees paid or accrued by us to Ernst & Young, LLP during these periods:

Type of Service	2016	2015	2014
Audit Fees (1)	$ 911,000	$ 921,000	$ 734,000
Audit-Related Fees (2)	25,000	23,000	23,000
Tax Fees (3)	88,000	71,000	84,000
Total	$ 1,024,000	$ 1,015,000	$ 841,000

(1) Comprised of the audit of our annual financial statements, internal controls over financial reporting, reviews of our quarterly financial statements, various SEC filings and statutory audits.
(2) Comprised of services rendered in connection with our audit of the Company's employee benefit plan.
(3) Comprised of services for tax compliance and tax return preparation.

In accordance with the Sarbanes-Oxley Act of 2002, the Audit Committee established policies and procedures under which all audit and non-audit services performed by our principal accountants must be approved in advance by the Audit Committee. As provided in the Sarbanes-Oxley Act of 2002, all audit and non-audit services to be provided after May 6, 2003 must be pre-approved by the Audit Committee in accordance with these policies and procedures.

PART IV

Item 15. Exhibits, Financial Statement Schedules.

Financial Statements

Schedule II—Valuation and Qualifying Accounts

Empire Resorts, Inc. and Subsidiaries

Valuation and Qualifying Accounts

December 31, 2016, 2015 and 2014

(in thousands)

Description	Balance at beginning of year	Addition charged to costs and expenses	Other additions (deductions)	Less deductions	Balance at end of year
Year ended December 31, 2016					
Allowance for doubtful accounts	$ 171	$ —	$ —	$ —	$ 171
Deferred tax asset valuation allowance	$ 86,092	$ —	$ 2,842	$ —	$ 88,934
Year ended December 31, 2015					
Allowance for doubtful accounts	$ 161	$ 10	$ —	$ —	$ 171
Deferred tax asset valuation allowance	$ 72,104	$ —	$ 13,988	$ —	$ 86,092
Year ended December 31, 2014					
Allowance for doubtful accounts	$ 166	$ —	$ (5)	$ —	$ 161
Deferred tax asset valuation allowance	$ 65,832	$ —	$ 6,272	$ —	$ 72,104

Exhibits

3.1*	Second Amended and Restated Certificate of Incorporation, dated November 1, 2016.
3.2	Third Amended and Restated By-Laws, as most recently amended on November 2, 2016. (1)
4.1*	Form of Common Stock Certificate.
4.2	Certificate of Designations, Preferences and Rights of Series B Preferred Stock dated July 31, 996. (2)
4.3	Certificate of Designation setting forth the Preferences, Rights and Limitations of Series B Preferred Stock and Series C Preferred Stock, dated May 29, 1998. (3)
4.4	Certificate of Amendment to the Certificate of Designation setting forth the Preferences, Rights and Limitations of Series B Preferred Stock and Series C Preferred Stock, dated June 13, 2001. (4)
4.5	Certificate of Designations setting forth the Preferences, Rights and Limitations of Series D Preferred Stock, dated February 7, 2000. (5)
4.6	Certificate of the Designations, Powers, Preferences and Rights of the Series E Preferred Stock, dated December 10, 2002. (6)
4.7	Certificate of Amendment of Certificate of the Designations, Powers, Preferences and Other Rights and Qualifications of the Series E Preferred Stock, dated January 12, 2004. (7)
4.8	Certificate of Designations of Series A Junior Participating Preferred Stock, dated March 24, 2008. (8)
4.9	Certificate of Amendment to the Certificate of Designations of Series A Junior Participating Preferred Stock, dated August 19, 2009. (9)
4.10	Common Stock Purchase Warrant, dated May 11, 2010, by and between Empire Resorts, Inc. and Joseph Bernstein, to purchase 2,000,000 shares of Common Stock. (10)
4.11	Letter Agreement, dated February 17, 2016, by and between Empire Resorts, Inc. and Kien Huat Realty III Limited (11)
10.1	Investment Agreement, dated as of August 19, 2009, by and between Empire Resorts, Inc. and Kien Huat Realty III Limited. (12)
10.2	Registration Rights Agreement, dated as of August 19, 2009, by and between Empire Resorts, Inc. and Kien Huat Realty III Limited. (13)
10.3	First Amendment and Clarification to the Investment Agreement dated as of September 30, 2009, between Empire Resorts, Inc. and Kien Huat Realty III Limited. (14)
10.4	Letter Agreement, dated December 31, 2015, by and between Empire Resorts, Inc. and Kien Huat Realty III Limited, relating to the Investment Agreement, dated August 19, 2009 (15)
10.5	Settlement Agreement and Release, dated as of May 11, 2010, by and among Empire Resorts, Inc., Kien Huat, Kok Thay Lim, Au Fook Yew, G. Michael Brown, and Joseph Bernstein. (16)
10.6	Loan Agreement dated as of November 17, 2010 between Empire Resorts, Inc. and Kien Huat Realty III Limited. (17)
10.7	Amendment No. 1 to the Loan Agreement, dated August 8, 2012, by and between Empire Resorts, Inc. and Kien Huat Realty III Limited. (18)
10.8	Amendment No. 2 to the Loan Agreement, dated December 18, 2013, by and between Empire Resorts, Inc. and Kien Huat Realty III Limited (19)
10.9	Amendment No. 3 to the Loan Agreement, dated as of March 3, 2015, by and between Empire Resorts, Inc. and Kien Huat Realty III Limited (20)
10.10	Convertible Promissory Note issued on November 17, 2010 by Empire Resorts, Inc. in favor of Kien Huat Realty III Limited. (21)
10.11 +	Amended and Restated Master Development Agreement, dated December 28, 2015, by and between Montreign Operating Company LLC, Empire Resorts Real Estate I, LLC, Empire Resorts Real Estate II LLC, EPT Concord II, LLC, EPR Concord II, L.P. and Adelaar Developer, LLC (22)
10.12*	First Amendment to Amended and Restated Master Development Agreement, dated January 24, 2017, by and between Montreign Operating Company LLC, Empire Resorts Real Estate I, LLC, Empire Resorts Real Estate II LLC, EPT Concord II, LLC, EPR Concord II, L.P. and Adelaar Developer, LLC
10.13 +	Purchase Option Agreement, dated December 28, 2015, by and between Montreign Operating Company LLC, EPT Concord II, LLC and EPR Concord II, L.P. (23)
10.14*	First Amendment to Purchase Option Agreement, dated January 24, 2017, by and between Montreign Operating Company LLC, EPT Concord II, LLC and EPR Concord II, L.P.

10.15	Completion Guaranty, dated December 28, 2015, by Empire Resorts, Inc. for the benefit of EPR Concord II, L.P., EPT Concord II, LLC, Adelaar Developer, LLC and EPR Properties (24)
10.16 +	Completion Guaranty, dated December 28, 2015, by EPR Properties for the benefit of Montreign Operating Company LLC, Empire Resorts Real Estate I, LLC, Empire Resorts Real Estate II, LLC and Empire Resorts, Inc. (25)
10.17 +	Lease, dated December 28, 2015, by and between EPT Concord II, LLC and Montreign Operating Company, LLC, relating to the Casino Parcel (26)
10.18*	First Amendment to Casino Lease, dated January 24, 2017, by and between EPT Concord II, LLC and Montreign Operating Company, LLC
10.19 +	Lease, dated December 28, 2015, by and between Adelaar Developer, LLC and Empire Resorts Real Estate II, LLC, relating to the Entertainment Village Parcel (27)
10.20*	First Amendment to Entertainment Village Sub-Lease, dated January 24, 2017, by and between Adelaar Developer, LLC and Empire Resorts Real Estate II, LLC
10.21 +	Lease, dated December 28, 2015, by and between Adelaar Developer, LLC and Empire Resorts Real Estate I, LLC, relating to the Golf Course Parcel (28)
10.22*	First Amendment to Golf Course Lease, dated January 24, 2017, by and between Adelaar Developer, LLC and Empire Resorts Real Estate I, LLC
10.23	Standby Purchase Agreement, dated December 31, 2015, by and between Empire Resorts, Inc. and Kien Huat Realty III Limited (29)
10.24	Standby Purchase Agreement, dated January 2, 2015, by and between Empire Resorts, Inc. and Kien Huat Realty III Limited (30)
10.25	Empire Resorts, Inc. 2005 Second Amended and Restated Equity Incentive Plan (31)
10.26 *	Empire Resorts, Inc. 2015 Amended and Restated Equity Incentive Plan
10.27	Form of Option Award under the Empire Resorts, Inc. 2015 Equity Incentive Plan (32)
10.28	Form of Restricted Stock Award under the Empire Resorts, Inc. 2015 Equity Incentive Plan (33)
10.29	Form of Restricted Stock Unit Award under the Empire Resorts, Inc. 2015 Equity Incentive Plan (34)
10.30	Form of Stock Appreciation Right Award under the Empire Resorts, Inc. 2015 Equity Incentive Plan (35)
10.31	Form of Stock Award under the Empire Resorts, Inc. 2015 Equity Incentive Plan (36)
10.32	Amended and Restated Employment Agreement, effective as of July 1, 2016, by and between Empire Resorts, Inc. and Joseph A. D'Amato (37)
10.33	Empire Resorts, Inc. Nonqualified Deferred Compensation Plan, effective as of January 1, 2017 (38)
10.34	Employment Agreement, dated August 17, 2012, by and between Empire Resorts, Inc. and Laurette J. Pitts (39)
10.35	Employment Agreement, dated December 7, 2012, by and between Empire Resorts, Inc. and Charles A. Degliomini (40)
10.36	Employment Agreement, dated August 22, 2012, by and between Empire Resorts, Inc. and Nanette L. Horner (41)
10.37	Amendment No. 1 to Employment Agreement, dated May 29, 2014, by and between Empire Resorts Inc. and Laurette J. Pitts (42)
10.38	Amendment No. 1 to Employment Agreement, dated May 30, 2014 by and between Empire Resorts Inc. and Nanette L. Horner (43)
10.39	Amendment No. 1 to Employment Agreement, dated August 24, 2014, by and between Empire Resorts Inc. and Charles A. Degliomini (44)
10.40	Amendment No. 2 to Employment Agreement by and between Empire Resorts, Inc. and Laurette J. Pitts, dated June 30, 2015 (45)
10.41	Amendment No. 2 to Employment Agreement by and between Empire Resorts, Inc. and Nanette L. Horner, dated June 30, 2015 (46)
10.42	Amendment No. 2 to Employment Agreement by and between Empire Resorts, Inc. and Charles A. Degliomini, dated June 30, 2015 (47)
10.43*	Building Term Loan Agreement among Montreign Operating Company, LLC, the Lenders and Credit Suisse AG, Cayman Islands Branch, dated as of January 24, 2017
10.44*	Form of Term A Note
10.45*	Form of Term B Note
10.46*	Form of Subsidiary Guaranty made by Montreign Operating Company, LLC in favor of Credit Suisse AG, Cayman Islands Branch, dated as of January 24, 2017
10.47*	Pledge and Security Agreement among Montreign Operating Company, LLC, the Grantors and Credit Suisse AG, Cayman Islands Branch, dated as of January 24, 2017

10.48*	Equity Pledge Agreement by Montreign Holding Company, LLC as Pledgor and Credit Suisse AG, Cayman Islands Branch as Collateral Agent, dated as of January 24, 2017
10.49*	Completion Guaranty by Empire Resorts, Inc. in favor of Credit Suisse AG, Cayman Islands Branch, dated as of January 24, 2017
10.50*	Project Disbursement Agreement among Credit Suisse AG, Cayman Islands Branch as the Disbursement Agent, Credit Suisse AG, Cayman Islands Branch as the Administrative Agent, Credit Suisse AG, Cayman Islands Branch as the Collateral Agent, Montreign Operating Company, LLC as the Borrower and Empire Resorts Real Estate II, LLC as the EV Subsidiary, dated as of January 24, 2017
10.51*	Building Loan Disbursement Agreement among Credit Suisse AG, Cayman Islands Branch as the Disbursement Agent, Credit Suisse AG, Cayman Islands Branch as the Administrative Agent, Credit Suisse AG, Cayman Islands Branch as the Collateral Agent, Montreign Operating Company, LLC as the Borrower and Empire Resorts Real Estate II, LLC as the EV Subsidiary, dated as of January 24, 2017
10.52*	Revolving Credit Agreement among Montreign Operating Company, LLC, the Lenders and Fifth Third Bank, dated as of January 24, 2017
10.53*	Form of Note
10.54*	Subsidiary Guaranty made by Montreign Operating Company, LLC in favor of Fifth Third Bank, dated as of January 24, 2017
10.55*	Pledge and Security Agreement among Montreign Operating Company, LLC, each of the other Grantors and Fifth Third Bank, dated as of January 24, 2017
10.56*	Equity Pledge Agreement by Montreign Holding Company, LLC as Pledgor and Fifth Third Bank as Collateral Agent, dated as of January 24, 2017.
10.57*	Loan Agreement between Montreign Holding Company, LLC and Kien Huat Realty III Limited, dated as of January 24, 2017
10.58*	Form of Promissory Note
10.59*	Pledge and Security Agreement by Empire Resorts, Inc. in favor of Kien Huat Realty III Limited, dated as of January 24, 2017
14.1	Code of Business Conduct and Ethics. (48)
14.2	Code of Ethics for the Principal Executive Officer and Senior Financial Officer(s). (49)
21.1 *	List of Subsidiaries.
23.1 *	Consent of Ernst & Young LLP.
31.1 *	Section 302 Certification of Principal Executive Officer.
31.2 *	Section 302 Certification of Principal Financial Officer.
32.1 *	Section 906 Certification of Principal Executive Officer and Principal Financial Officer.
101	Interactive Data File (XBRL).

* Filed herewith.

\+ Confidential information has been omitted and confidential treatment has been granted with respect to the omitted information.

(1) Incorporated by reference to Exhibit 3.2 of Empire Resorts, Inc.'s Current Report on Form 8-K (an "8-K"), filed with the Securities and Exchange Commission (the "Commission") on November 2, 2016.

(2) Incorporated by reference to Exhibit 4.2 to Empire Resorts, Inc.'s 10-K for the year ended December 31, 2003 (the "2003 10-K"), filed with the Commission on March 30, 2004.

(3) Incorporated by reference to Exhibit 4.3 to the 2003 10-K.

(4) Incorporated by reference to Exhibit 4.4 to the 2003 10-K.

(5) Incorporated by reference to Exhibit 4 to Empire Resorts, Inc.'s 8-K, filed with the Commission on February 15, 2000.

(6) Incorporated by reference to Exhibit 4.5 to the 2003 10-K

(7) Incorporated by reference to Exhibit 4.6 to the 2003 10-K

(8) Incorporated by reference to Exhibit 3.1 to Empire Resort, Inc.'s 8-K, filed with the Commission on March 24, 2008.

(9) Incorporated by reference to Exhibit 4.1 to Empire Resorts, Inc.'s 8-K, filed with the Commission on August 19, 2009 (the "8/19/09 8-K").

(10) Incorporated by reference to Exhibit 4.10 to the Registration Statement on Form S-1, filed with the Commission on December 11, 2013.

(11) Incorporated by reference to Exhibit 4.1 to Empire Resorts, Inc.'s Current Report on Form 8-K, filed with the Commission on February 18, 2016.

(12) Incorporated by reference to Exhibit 10.1 of the 8/19/09 8-K.

(13) Incorporated by reference to Exhibit 10.2 to the 8/19/09 8-K

(14) Incorporated by reference to Exhibit 10.1 to Empire Resorts, Inc.'s 8-K, filed with the Commission on October 5, 2009 (the "10/5/09 8-K").

(15) Incorporated by reference to Exhibit 10.1 to Empire Resorts, Inc.'s 10-K for the year ended December 31, 2015, filed with the Commission on March 10, 2016 (the "2015 10-K").

(16) Incorporated by reference to Exhibit 10.1 to Empire Resorts, Inc.'s Quarterly Report on Form 10-Q (a "10-Q"), filed with the Commission on March 31, 2010.

(17) Incorporated by reference to Exhibit 4.2 to Empire Resorts, Inc.'s 8-K, filed with the Commission on November 19, 2010 (the "11/19/10 8-K").

(18) Incorporated by reference to Exhibit 10.4 to Empire Resorts, Inc.'s 10-Q for the period ended June 30, 2012, filed with the Commission on August 14, 2012

(19) Incorporated by reference to Exhibit 10.1 to Empire Resorts, Inc.'s 8-K, filed with the Commission on December 19, 2013

(20) Incorporated by reference to Exhibit 10.1 to Empire Resorts, Inc.'s , filed with the Commission on March 3, 2015.

(21) Incorporated by reference to Exhibit 4.1 to the 11/19/10 8-K.

(22) Incorporated by reference to Exhibit 10.22 to Empire Resorts, Inc.'s 2015 10-K.

(23) Incorporated by reference to Exhibit 10.23 to Empire Resorts, Inc.'s 2015 10-K.

(24) Incorporated by reference to Exhibit 10.24 to Empire Resorts, Inc.'s 2015 10-K.

(25) Incorporated by reference to Exhibit 10.15 to Empire Resorts, Inc.'s 2015 10-K.

(26) Incorporated by reference to Exhibit 10.16 to Empire Resorts, Inc.'s 2015 10-K.

(27) Incorporated by reference to Exhibit 10.17 to Empire Resorts, Inc.'s 2015 10-K.

(28) Incorporated by reference to Exhibit 10.18 to Empire Resorts, Inc.'s 2015 10-K.

(29) Incorporated by reference to Exhibit 99.1 to Empire Resorts, Inc.'s 8-K, filed with the Commission on January 4, 2016.

(30) Incorporated by Reference to Exhibit 99.1 to the Company's 8-K as filed with the Commission on January 5, 2015

(31) Incorporated by reference to Exhibit 10.1 to Empire Resorts, Inc.'s 8-K, filed with the Commission on August 17, 2005.

(32) Incorporated by reference to Exhibit 10.23 to the 2015 10-K.

(33) Incorporated by reference to Exhibit 10.24 to the 2015 10-K.

(34) Incorporated by reference to Exhibit 10.25 to the 2015 10-K.

(35) Incorporated by reference to Exhibit 10.26 to the 2015 10-K.

(36) Incorporated by reference to Exhibit 10.27 to the 2015 10-K.

(37) Incorporated by reference to Exhibit 10.1 to Empire Resorts, Inc.'s 10-Q, filed with the Commission on August 2, 2016.

(38) Incorporated by reference to Exhibit 10.1 of Empire Resorts, Inc.'s 8-K, as filed with the Commission on December 7, 2016

(39) Incorporated by reference to Exhibit 10.1 to Empire Resorts, Inc.'s 8-K, filed with the Commission on August 23, 2012.

(40) Incorporated by reference to Exhibit 10.1 to Empire Resorts, Inc.'s 8-K, filed with the Commission on December 13, 2012.

(41) Incorporated by reference to Exhibit 10.2 to Empire Resorts, Inc.'s 8-K, filed with the Commission on August 23, 2012.

(42) Incorporated by reference to Exhibit 10.2 to Empire Resorts, Inc.'s 8-K, filed with the Commission on June 3, 2014.

(43) Incorporated by reference to Exhibit 10.3 to Empire Resorts, Inc.'s Form 8-K, filed with the Commission on June 3, 2014.

(44) Incorporated by reference to Exhibit 10.1 to Empire Resorts, Inc.'s Form 8-K, filed with the Commission on August 26, 2014.

(45) Incorporated by reference to Exhibit 10.2 to Empire Resorts, Inc.'s Form 8-K, filed with the Commission on July 7, 2015.

(46) Incorporated by reference to Exhibit 10.4 to Empire Resorts, Inc.'s Form 8-K, filed with the Commission on July 7, 2015.

(47) Incorporated by reference to Exhibit 10.3 to Empire Resorts, Inc.'s Form 8-K, filed with the Commission on July 7, 2015.

(48) Incorporated by reference to Exhibit 14.1 to Empire Resorts, Inc.'s Current Report on Form 8-K/A, filed with the Commission on November 16, 2011 (the "11/16/11 8-K").

(49) Incorporated by reference to Exhibit 14.2 to the 11.16.11 8-K.

SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) of the Exchange Act, the registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

EMPIRE RESORTS, INC.

By: /s/ Joseph A. D'Amato

Name: Joseph A. D'Amato
Title: Chief Executive Officer
Date: March 13, 2017

Pursuant to the requirements of the Exchange Act, this report has been signed below by the following persons on behalf of the registrant and in the capacities and on the dates indicated.

Signature	Title	Date
/s/ Joseph A. D'Amato Joseph A. D'Amato	Chief Executive Officer and Director (Principal Executive Officer)	March 13, 2017
/s/ Laurette J. Pitts Laurette J. Pitts	Executive Vice President, Chief Operating Officer and Chief Financial Officer (Principal Financial and Accounting Officer)	March 13, 2017
/s/ Emanuel R. Pearlman Emanuel R. Pearlman	Chairman of the Board	March 13, 2017
/s/ Edmund Marinucci Edmund Marinucci	Director	March 13, 2017
/s/ Keith L. Horn Keith L. Horn	Director	March 13, 2017
/s/ Nancy A. Palumbo Nancy A. Palumbo	Director	March 13, 2017
/s/ Gregg Polle Gregg Polle	Director	March 13, 2017

Index to Exhibits

23.1	Consent of Independent Registered Accounting Firm.
31.1	Section 302 Certification of Principal Executive Officer.
31.2	Section 302 Certification of Principal Financial Officer.
32.1	Section 906 Certification of Principal Executive Officer and Principal Financial Officer.
101	Interactive Data File (XBRL).

EXHIBIT 3.1

SECOND AMENDED AND RESTATED

CERTIFICATE OF INCORPORATION

OF

EMPIRE RESORTS, INC.

Pursuant to Sections 242 and 245 of the Delaware General Corporation Law

Empire Resorts, Inc. (hereinafter referred to as the "Corporation"), a corporation organized and existing under and by virtue of the Delaware General Corporation Law, hereby certifies as follows:

1) the present name of the corporation is "Empire Resorts, Inc.";

2) the name under which the Corporation was originally incorporated is "Alpha Hospitality Corporation"; and

3) the date of filing of the original certificate of incorporation of the Corporation with the Secretary of State of Delaware was March 19, 1993.

The Amended and Restated Certificate of Incorporation of the Corporation is hereby amended and restated to read in its entirety as follows:

FIRST: The name of the Corporation is "Empire Resorts, Inc."

SECOND: The registered office of the corporation and registered agent in the State of Delaware is to be located at 2711 Centerville Road, Suite 400, Wilmington, Delaware 19808, county of New Castle. The name of its registered agent is The Prentice-Hall Corporation System, Inc.

THIRD: The nature of the business, and the objects and purposes proposed to be transacted, promoted and carried on, are to do any and all things herein mentioned, as fully and to the same extent as natural persons might or could do, and in any part of the world, viz:

To do any lawful act or thing for which a corporation may be organized under the General Corporation Law of the State of Delaware (the "GCL").

FOURTH: The total number of shares of stock that the Corporation shall have the authority to issue is one hundred fifty-five million (155,000,000), consisting of one hundred fifty million (150,000,000) shares of Common Stock, each such share having a par value of $.01, and five million (5,000,000) shares of Preferred Stock, each such share having a par value of $.01. The Board of Directors is expressly authorized to issue Preferred Stock without stockholder approval, in one or more series, and to fix for each such series such voting powers, full or limited, and such designations, preferences and relative, participating, optional or special rights and such qualifications, limitations or restrictions thereof as shall be stated and expressed

in the resolution or resolutions adopted by the Board of Directors providing for the issue of such series and as may be permitted by the Delaware General Corporation Law.

FIFTH: **A.** A director of the Corporation shall not be personally liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director, except for liability (i) for any breach of the directors' duty of loyalty to the Corporation or its stockholders, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) under Section 174 of the GCL, or (iv) for any transaction from which this director derived an improper personal benefit. If the GCL is amended to authorize corporate action further eliminating or limiting the personal liability of directors, then the liability of a director of the Corporation shall be eliminated or limited to the fullest extent permitted by the GCL, as so amended. Any repeal or modification of this Paragraph A shall not adversely affect any right or protection of a director of the Corporation with respect to events occurring prior to the time of such repeal or modification.

B. (1) Each person who was or is made a party or is threatened to be made a party to any action, suit, or proceeding, whether civil, criminal, administrative or investigative (hereinafter a "proceeding"), by reason of the fact that he or she or a person of whom he or she is the legal representative is or was a director or officer of the Corporation as a trustee of an employee benefit plan, or is or was serving at the request of the Corporation, as a director or officer of another corporation or of a partnership, joint venture, trust or other enterprise shall be indemnified and held harmless by the Corporation to the fullest extent authorized by the GCL as the same exists or may hereafter be amended against all expense, liability and loss (including attorneys fees,) judgments, fines, ERISA excise taxes or penalties and amounts paid or to be paid in settlement) reasonably incurred or suffered by such person in connection therewith and such indemnification shall continue as to a person who has ceased to be a director or officer and shall inure to the benefit of his or her heirs, executors and administrators; provided, however, that except as provided in paragraph (2) of this Paragraph B with respect to proceedings seeking to enforce rights to indemnification, the Corporation shall indemnify any such person seeking indemnification in connection with a proceeding (or part thereof) initiated by such person only if such proceeding (or part thereof) was authorized by the Board of Directors of the Corporation. The right to indemnification conferred in this Paragraph B shall be a contract right and shall include the right to be paid by the Corporation the expenses incurred in defending any such proceeding in advance of its final disposition; provided, however, that if the GCL requires, the payment of such expenses incurred by a director or officer in his or her capacity as a director or officer (and not in any other capacity) in which service was or is rendered by such person while a director or officer, including, without limitation, service to an employee benefit plan) in advance of the final disposition of a proceeding, shall be made only upon delivery to the Corporation of an undertaking by or on behalf of such director or officer to repay all amounts so advanced if it shall ultimately be determined that such director or officer is not entitled to be indemnified under this Paragraph B or otherwise.

(2) If a claim under paragraph (1) of this Paragraph B is not paid in full by the Corporation within thirty days after a written claim has been received by the Corporation, the claimant may at any time thereafter bring suit against the Corporation to recover the unpaid amount of the claim and the claimant shall be entitled to be paid also the expense of prosecuting such claim to the fullest extent permitted by the GCL. It shall be a defense to any such action (other than an action brought to enforce a claim for expenses incurred in defending any proceeding in advance of its final disposition where the required undertaking, if any is required, has been tendered to the Corporation) that he claimant has not met the standards of conduct which make it permissible under the act for the Corporation to indemnify the claimant for the amount claimed but the burden of proving such defense shall be on the Corporation. Neither the failure of the Corporation (including its Board of Directors, independent legal counsel or stockholders) to have made a determination prior to the commencement of such action that indemnification of the claimant is proper in the circumstances because

he or she has met the applicable standard of conduct set forth in the GCL, nor an actual determination by the Corporation (including its Board of Directors, independent legal counsel or stockholders) that the claimant has not met such applicable standard of conduct, shall be a defense to the action or create a presumption that the claimant has not met the applicable standard of conduct.

(3) The right to indemnification and the payment of expenses incurred in defending a proceeding in advance of its final disposition conferred in this Paragraph B shall not be exclusive of any other right which any person may have or hereafter acquire under any statute, provision of the certificate of incorporation, By-Laws, agreement, vote of stockholders or disinterested directors or otherwise.

(4) The Corporation may maintain insurance, at its expense, to protect itself and any director, officer employee or agent of the Corporation or another corporation, partnership, joint venture, trust or other enterprise against any expense, liability or loss, whether or not the Corporation would have the power to indemnify such person against such expense, liability or loss under the GCL.

(5) The Corporation may, to the extent authorized from time to time by the Board of Directors, grant rights to indemnification, and rights to be paid by the Corporation for the expenses incurred in defending any proceeding in advance of its final disposition, to any employee or agent of the Corporation to the fullest extent of the provisions of this Paragraph B with respect to the indemnification and advancement of expenses of directors and officers of the Corporation.

SIXTH: In addition to any other considerations which the Board of Directors may lawfully take into account, in determining whether to take or to refrain from taking corporate action on any matter, including proposing any matter to the stockholders of the Corporation, the Board of Directors may take into account the long-term as well as short-term interests of the Corporation and its stockholders (including the possibility that these interests may be best served by the continued independence of the Corporation), the interests of creditors, customers, employees and other constituencies of the Corporation and its subsidiaries and the effect upon communities in which the Corporation and its subsidiaries do business.

SEVENTH: In furtherance and not in limitation of the powers conferred by law or in this Certificate of Incorporation, the Board of Directors (and any committee of the Board of Directors) is expressly authorized, to the extent permitted by law, to take such action or actions as the Board or such committee may determine to be reasonably necessary or desirable to (A) encourage any person to enter into negotiations with the Board of Directors and management of the Corporation with respect to any transaction which may result in a change in control of the Corporation which is proposed or initiated by such person or (B) contest or oppose any such transaction which the Board of Directors or such committee determines to be unfair, abusive or otherwise undesirable with respect to the Corporation and its business, assets or properties or the stockholders of the Corporation, including, without limitation, the adoption of plans or the issuance of rights, options, capital stock, notes, debentures or other evidences of indebtedness or other securities of the Corporation, which rights, options, capital stock, notes, evidences of indebtedness and other securities (i) may be exchangeable for or convertible into cash or other securities on such terms and conditions as may be determined by the Board or such Committee and (ii) may provide for the treatment of any holder or class of holders thereof designated by the Board of Directors or any such committee in respect of the terms, conditions, provisions and rights of such securities which is different from, and unequal to, the terms, conditions, provisions and rights applicable to all other holders thereof.

EIGHTH: The Corporation reserves the right to amend, alter, change or repeal any provision contained in this Certificate of Incorporation, and any other provisions authorized by the laws of the state of Delaware at the time in force may be added or inserted, subject to the limitations set forth in this Certificate

of Incorporation and in the manner now or hereafter provided herein by statute, and all rights, preferences and privileges of whatsoever nature conferred upon stockholders, directors or any other persons whomsoever by and pursuant to this certificate of incorporation in its present form or as amended are granted subject to the rights reserved in this Article EIGHTH.

NINTH: So long as the Corporation holds (directly or indirectly) a license or franchise from a government agency to conduct its business, which license or franchise is conditioned upon some or all of the holders of the Corporation's stock possessing prescribed qualifications, any and all shares of the Corporation's stock shall be held subject to the condition that if a holder thereof does not possess the prescribed qualifications ("Disqualified Holder"), such Disqualified Holder shall dispose of his interest in the Corporation's securities within 120 days or such other time period required by the relevant government agency following the Corporation's receipt of notice (the "Notice Date") of such Disqualified Holder from a government agency. Promptly following the Notice Date, the Corporation shall personally deliver a copy of such written notice to the Disqualified Holder, mail it to such Disqualified Holder at the address shown on the Corporation's books and records, or use any other reasonable means of delivering a copy of such written notice to the Disqualified Holder. Failure of the Corporation to provide notice to a Disqualified Holder after making reasonable efforts to do so shall not preclude the Corporation from exercising its rights under this paragraph 9. In addition, the Corporation, at its sole option and in its sole discretion, may redeem the stock of a Disqualified Holder to the extent necessary to prevent the loss of such license or franchise or to reinstate it. Any shares of the Corporation's stock redeemable pursuant to this paragraph 9 may be called for redemption immediately for cash, property or rights, including securities of the Corporation or another corporation, on not less than five (5) days' notice to the Disqualified Holder at a redemption price equal to the average closing price of such stock on a national securities exchange for the 45 trading days immediately preceding the date of the redemption notice; or if such stock is not so traded, then the average of the high and low closing bid price of the stock as quoted by the National Association of Securities Dealers Automated Quotation system for such 45 trading day period; or if such stock is not so quoted, the redemption price shall be determined in good faith by the Corporation's Board of Directors. A Disqualified Holder shall reimburse the Corporation for all expenses incurred by the Corporation in performing its obligations and exercising its rights under this paragraph 9.

TENTH: The Corporation's Board of Directors (by a majority vote of the directors then in office) shall have the right, power and authority to adopt any new by-law and/or amend or repeal any then-existing by-law; provided, however, that the Corporation's Board of Directors may not amend or repeal any by-law that, by its very terms, is not subject to amendment or repeal except by or upon approval of the Corporation's stockholders or any class, series or other group or portion thereof.

ELEVENTH:

A. NUMBER OF DIRECTORS. Subject to the rights, if any, of the holders of any series of Preferred Stock to elect additional directors under specified circumstances, the number of directors shall be fixed from time to time exclusively by the Board of Directors pursuant to a resolution adopted by a majority of the total number of directors which the Corporation would have if there were no vacancies (the "Whole Board").

B. ELECTION AND TERMS OF DIRECTORS. Directors shall be elected by a plurality of votes cast. Each director shall be elected for a one-year term expiring at the next annual meeting of stockholders of the Corporation and until such director's successor shall have been elected and qualified.

C. NEWLY CREATED DIRECTORSHIPS AND VACANCIES.

Subject to the rights of the holders of any series of Preferred Stock, newly created directorships resulting from any increase in the authorized number of directors or any vacancies on the Board of Directors resulting from death, resignation, retirement, disqualification, removal from office or other cause (other than a vacancy resulting from removal by the stockholders, in which case such vacancy shall be filled by the stockholders) shall be filled only by a majority vote of the directors then in office, though less than a quorum, and a director so chosen shall hold office until the next stockholders' meeting at which directors are elected and until his successor is elected and qualified. No decrease in the number of authorized directors constituting the entire Board of Directors shall shorten the term of any incumbent director.

D. AMENDMENTS TO ARTICLE ELEVENTH SECTION 11(B). The affirmative vote of the holders of eighty percent (80%) of the voting power of all of the then outstanding shares of the capital stock of the Corporation entitled to vote generally in the election of directors (the "Voting Stock"), voting together as a single class, shall be required to amend or repeal, or to adopt any provision inconsistent with Article Eleventh Sections 11(B) unless approved by at least seventy-five percent (75%) of the Whole Board. In the event that at least seventy-five percent (75%) of the Whole Board approves any such provision, then the affirmative vote of the holders of outstanding stock representing at least a majority of the voting power of all of the then outstanding shares of Voting Stock, voting together as a single class, shall be required to amend or repeal, or to adopt any provision inconsistent with Article Eleventh Sections 11(B).

E. REMOVAL. Subject to the rights of the holders of Preferred Stock, and unless this Certificate of Incorporation otherwise provides, any director or the entire Board of Directors may be removed with or without cause by the affirmative vote of eighty percent (80%) of the voting power of all of the then outstanding shares of Voting Stock, voting together as a single class.

TWELFTH: Internal Corporate Claims shall be brought solely and exclusively in the courts of the State of Delaware; provided, however, that an internal corporate claim may be brought in another forum if the courts of the State of Delaware cannot exercise personal jurisdiction over all necessary parties or lack subject matter jurisdiction over the claim. "Internal Corporate Claims" means claims, including claims in the right of the corporation, (i) that are based upon a violation of a duty by a current or former director or officer or stockholder in such capacity, or (ii) as to which the General Corporation Law of Delaware confers jurisdiction upon the Court of Chancery of the State of Delaware.

[*Signature Page Follows*]

IN WITNESS WHEREOF, the Corporation has caused this Amended and Restated Certificate of Incorporation to be signed by the undersigned this 1st day of November, 2016.

Empire Resorts, Inc.

By: /s/ Joseph A. D'Amato
Name: Joseph A. D'Amato
Title: Chief Executive Officer

NUMBER
ER 01380

This certificate of stock is transferable only subject to the provisions of Section three hundred three of the Racing, Pari-Mutuel Wagering and Breeding Law, so long as the Corporation holds directly or indirectly a license issued by the New York State Gaming Commission, and may be subject to compliance with the requirements of other laws pertaining to licenses held directly or indirectly by the Corporation. The owner of stock issued by the Corporation may be required by regulatory authorities to possess certain qualifications and may be required to dispose of this stock if the owner does not possess such qualifications.

SHARES

CUSIP 292052 30 5

SEE REVERSE FOR CERTAIN DEFINITIONS

EMPIRE RESORTS

INCORPORATED

INCORPORATED UNDER THE LAWS OF THE STATE OF DELAWARE

COMMON STOCK

THIS CERTIFIES THAT:

IS THE OWNER OF

FULLY PAID AND NON-ASSESSABLE SHARES OF COMMON STOCK OF THE PAR VALUE OF ONE CENT ($.01) PER SHARE, OF

EMPIRE RESORTS, INC.

(herein called the "Corporation"), transferable on the books of the Corporation by the holder hereof in person or by duly authorized attorney upon surrender of this certificate properly endorsed. This certificate is not valid unless countersigned and registered by the Transfer Agent and Registrar.

WITNESS the facsimile seal of the Corporation and the facsimile signatures of its duly authorized officers.

DATED:

EMPIRE RESORTS, INC. CORPORATE SEAL 1993 DELAWARE

COUNTERSIGNED:
CONTINENTAL STOCK TRANSFER & TRUST COMPANY
NEW YORK, NY
TRANSFER AGENT

BY:

AUTHORIZED OFFICER

SECRETARY

CEO

EMPIRE RESORTS, INC.

The following abbreviations, when used in the inscription on the face of this certificate, shall be construed as though they were written out in full according to applicable laws or regulations:

TEN COM - as tenants in common	*UNIF GIFT MIN ACT - .....Custodian..... (Cust) (Minor)*
TEN ENT - as tenants by the entireties	*under Uniform Gifts to Minors*
JT TEN - as joint tenants with right of survivorship and not as tenants in common	*Act..... (State)*

Additional abbreviations may also be used though not in the above list.

For Value Received, _____ hereby sell, assign and transfer unto

PLEASE INSERT SOCIAL SECURITY OR OTHER IDENTIFYING NUMBER OF ASSIGNEE

_____

(PLEASE PRINT OR TYPE NAME AND ADDRESS, INCLUDING ZIP CODE, OF ASSIGNEE)

_____

_____

_____ *Shares of the stock represented by the within Certificate, and do hereby irrevocably constitute and appoint*

_____ *Attorney to transfer the said stock on the books of the within named Corporation with full power of substitution in the premises.*

Dated _____

NOTICE: THE SIGNATURE TO THIS ASSIGNMENT MUST CORRESPOND WITH THE NAME AS WRITTEN UPON THE FACE OF THE CERTIFICATE IN EVERY PARTICULAR, WITHOUT ALTERATION OR ENLARGEMENT OR ANY CHANGE WHATSOEVER.

This certificate of stock is transferable only subject to the provisions of Section three hundred three of the Racing, Pari-Mutuel Wagering and Breeding Law, so long as the Corporation holds directly or indirectly a license issued by the New York State Gaming Commission, and may be subject to compliance with the requirements of other laws pertaining to licenses held directly or indirectly by the Corporation. The owner of stock issued by the Corporation may be required by regulatory authorities to possess certain qualifications and may be required to dispose of this stock if the owner does not possess such qualifications.

This certificate also evidences and entitles the holder hereof to certain Rights as set forth in the Rights Agreement between Empire Resorts, Inc. (the "Company") and Continental Stock Transfer & Trust Company (the "Rights Agent"), dated as of March 24, 2008, as it may be amended from time to time (the "Rights Agreement"), the terms of which are hereby incorporated herein by reference and a copy of which is on file at the office of the Rights Agent designated for such purpose. Under certain circumstances, as set forth in the Rights Agreement, such Rights will be evidenced by separate certificates and will no longer be evidenced by this certificate. The Rights Agent will mail to the holder of this certificate a copy of the Rights Agreement, as in effect on the date of mailing, without charge, promptly after receipt of a written request therefor. Under certain circumstances set for in the Rights Agreement, Rights issued to, or held by, any Person who is, was or becomes an Acquiring Person or any Affiliate or Associate thereof (as such terms are defined in the Rights Agreement), whether currently held by or on behalf of such Person or by any subsequent holder, may become null and void.

THE SIGNATURE TO THE ASSIGNMENT MUST CORRESPOND TO THE NAME AS WRITTEN UPON THE FACE OF THIS CERTIFICATE IN EVERY PARTICULAR, WITHOUT ALTERATION OR ENLARGEMENT OR ANY CHANGE WHATSOEVER, AND MUST BE GUARANTEED BY A COMMERCIAL BANK OR TRUST COMPANY OR A MEMBER FIRM OF A NATIONAL OR REGIONAL OR OTHER RECOGNIZED STOCK EXCHANGE IN CONFORMANCE WITH A SIGNATURE GUARANTEE MEDALLION PROGRAM.

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EXHIBIT 10.12

FIRST AMENDMENT TO AMENDED AND RESTATED MASTER DEVELOPMENT AGREEMENT

THIS FIRST AMENDMENT TO THE AMENDED AND RESTATED MASTER DEVELOPMENT AGREEMENT (the "First Amendment") is made and entered this 24th day of January, 2017 among EPT CONCORD II, LLC, a Delaware limited

liability company ("EPT"), EPR CONCORD II, L.P., a Delaware limited partnership ("EPR LP"), Adelaar Developer, LLC, a Delaware limited liability company ("Adelaar Developer"), each having offices at 909 Walnut Street, Suite 200, Kansas City, Missouri 64106 ("EPT," "EPR LP," and "Adelaar Developer" herein collectively referenced as "EPR"), Montreign Operating Company, LLC, a New York limited liability company, Empire Resorts Real Estate I, LLC and Empire Resorts Real Estate II, LLC, each a New York limited liability company having an address at 204 State Route 17B, Monticello, New York 12701 (herein collectively referenced as "Empire Developers," and together with EPR, the "Parties").

WITNESSETH:

WHEREAS, on December 28, 2015, the Parties entered into an Amended and Restated Master Development Agreement (the "MDA"); and

WHEREAS, pursuant to Section 6.2 of the MDA, the Parties agreed to fund and allocate between and among them certain Electric Service Costs, which were not included in the calculation of the Common Infrastructure Costs or the Capital Assessment Cap Amount; and

WHEREAS, Schedule 2 to the MDA set forth the Common Infrastructure Costs; and

WHEREAS, Schedule 3 to the MDA set forth the Capital Assessment Cap Amount; and

WHEREAS, the Parties desire to revise Article 6 of the MDA, and Schedules 2 and 3, in order to reflect additional Common Infrastructure Costs relating to Electric Service Costs and the closing of the tax-exempt bond financing; and

WHEREAS, the Parties also desire to revise the legal descriptions of the Casino Parcel, the Golf Course Parcel and the Entertainment Village Parcel (in each case, as defined in the MDA);

NOW, THEREFORE, in consideration of the recitals, the mutual covenants and promises set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Section 2.1 of the MDA is hereby revised to delete the definition of "Empire Common Infrastructure Cap".
2. Section 6.2 of the MDA shall be amended and restated as follows:

(a) EPR has caused the Infrastructure Consultants to develop an estimated budget for the costs of the Common Infrastructure Work (the "***Common Infrastructure Costs***"), which includes the hard costs and soft costs (including the cost of designing the Infrastructure Plans, permitting, etc.) of the Common Infrastructure Work (the "***Common Infrastructure Budget***"). The Common Infrastructure Budget, annexed hereto as Schedule 2, has been approved by each party, and may be modified only in accordance with Section 6.2(h).

(b) EPR shall supervise, construct and Complete, or cause to be supervised and constructed and Completed, at its sole cost and expense except as hereinafter provided, the Common Infrastructure Work in accordance with the Infrastructure Plans, including, without limitation, the access drives, grading, drainage, entry road, paving, lighting, striping, landscaping up to, but not including the perimeter curb lines of the Empire Parcels and all off-site work such as curb cuts, acceleration and deceleration lanes, road widening, bridges, interchanges, traffic signals and sanitary sewer lines, in accordance with the Infrastructure Plans, as same may be amended in accordance with this Agreement. EPR shall complete such Common Infrastructure Work in accordance with the Project Schedule, as same may be amended in accordance with Section 9.3 hereof, free and clear of all material liens (other than immaterial amounts that will be paid in the ordinary course of business or are being contested in good faith).

(c) EPR and the Empire Developers acknowledge that EPR intends to finance the Common Infrastructure Costs through tax-exempt bonds issued by a local development corporation established pursuant to Section 1411 of the Not-for-Profit Corporation Law. The debt service and repayment of the principal for such bonds with respect to the initial construction and placement into service of the Common Infrastructure Work shall be paid from special assessments levied on property within Special Improvement Districts established pursuant to Article 12 of the Town Law or other applicable law (the "***Special District Capital Assessments***"). Notwithstanding anything herein to the contrary, the amount of the bond issue shall not be subject to the Empire Developers' approval or consent, so long as (i) the financing is substantially in the form approved by the Empire Developers and (ii) the Special District Capital Assessments payable each year by each of the Empire Developers for each of the Casino Parcel, Golf Course Parcel and Entertainment Village Parcel, respectively, shall not exceed the Capital Assessments Cap Amount. The annual " ***Capital Assessments Cap Amount***" shall equal, with respect to each of the Casino Parcel, Golf Course Parcel and Entertainment Village Parcel, the amounts set forth on Schedule 3 hereto in the "Annual Debt Service" table for each respective parcel. Any Special District Capital Assessments in excess of the Capital Assessments Cap Amount shall be payable by EPR in accordance with the Ground Leases and may be deducted from the Purchase Price (as defined in and in accordance with the Purchase Option Agreement).

(d) EPR and the Empire Developers hereby agree to cooperate with the Governmental Authorities to endeavor to limit the applicable portion of the Special District Capital Assessments with respect to the costs of the initial construction and placement into service of the Common Infrastructure Work for the Casino Parcel, Golf Course Parcel, Entertainment Village Parcel and Waterpark Project to no more than the amounts set forth in Schedule 3. The Capital Assessments Cap Amount shall not include unrelated future special assessments, other district assessments, or assessments required in each case to the extent, and only to the extent, as a result

of changes to the Empire Project development plans which require materially greater infrastructure support than as set forth in the Infrastructure Plans or as otherwise arising as a result of system-wide upgrades, enhancements, improvements or additions to the Common Infrastructure Work required by a Governmental Authority, which the parties expect to be allocated pro rata amongst all members of the applicable Special Improvement Districts. For avoidance of doubt, each of the Empire Developers shall pay any charges for the operation and maintenance costs of the Common Infrastructure Work (the "***Special District O&M Assessments***") applicable to its portion of the Empire Project, and the Capital Assessments Cap Amount shall only apply to the Special District Capital Assessments levied on the Casino Parcel, the Golf Course Parcel and the Entertainment Village Parcel. Additionally, if the Casino Developer exercises the Purchase Option, then following the Purchase Date (as defined in and in accordance with the Purchase Option Agreement), EPR shall have no responsibilities with respect to any Capital Assessments in excess of the Capital Assessments Cap Amount (it being understood that the Casino Developer shall receive a credit against the Purchase Price (as defined in and in accordance with the Purchase Option Agreement) for any such amounts subject to and in accordance with the terms of the Purchase Option Agreement).

(e) [Intentionally omitted.]

(f) [Intentionally omitted.]

(g) [Intentionally omitted.]

(h) The foregoing provisions of this Section 6 shall not be construed as meaning that the Infrastructure Plans or Common Infrastructure Budget may not be amended or changed subsequent to the date hereof, but notwithstanding the foregoing or anything else set forth herein or any other Project Agreement, any (i) material or substantial change or amendment to the Infrastructure Plans which could have a material, adverse effect on access to or operation of any portion of the Empire Project or on the quality of the Common Infrastructure Work or (ii) will increase the Common Infrastructure Budget by more than 15% (each of (i) and (ii), a "***Material Change***") shall require the advance written approval of the Empire Developers. In addition, for avoidance of doubt, in no event shall each of the Empire Developers be responsible for any portion of the Common Infrastructure Costs in excess of the Capital Assessments Cap Amount for each of the Casino Parcel, Golf Course Parcel and Entertainment Village Parcel, respectively, (including, without limitation, as a result of a Material Change), provided that, for avoidance of doubt, Special District Capital Assessments arising pursuant to the penultimate sentence of Section **Error! Reference source not found.** of this Agreement are not included in the Common Infrastructure Work and shall not be subject to the Capital Assessments Cap Amount. The notice from EPR of a Material Change shall describe in detail the change or amendment to the Infrastructure Plans in question. If the Empire Developers shall withhold approval, the reasons for such approval shall be specified in a written notice from the Empire Developers to EPR. EPR shall, at its option, thereafter modify the Material Change to address the Empire Developers' objection, and shall resubmit the same to the Empire Developers for the Empire Developers' approval. Whenever either of EPR or the Empire Developers is granted an approval right for purposes of Section 6.2, such approval shall not be unreasonably withheld. Any disputes arising out of the approval of the Infrastructure Plans

or Common Infrastructure Costs or the application of the Capital Assessments Cap Amount shall be resolved in accordance with Article 12.

(i) EPR agrees to bring temporary electricity to the Project in accordance herewith and with the Project Schedule, and the Casino Developer has contributed $175,000.00 towards the capital costs of bringing such temporary electricity to the Project, receipt of which is hereby acknowledged by EPR.

(j) The provisions of this Section 6.2 shall survive the expiration or earlier termination of this Agreement.

3. Schedule 2 to the MDA shall be replaced with a new Schedule 2, a copy of which is annexed hereto.

4. Schedule 3 to the MDA shall be replaced with a new Schedule 3, a copy of which is annexed hereto.

5. Exhibit B of the MDA shall be replaced with a new Exhibit B, a copy of which is annexed hereto.

6. Except as herein amended, all other terms and provisions of the MDA remain in full force and effect.

[Signatures appear on the following page]

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be duly executed as of the date first written above.

EPR:

EPT CONCORD II LLC, a Delaware limited liability company

By: /s/ Gregory K. Silvers
Name: Gregory K. Silvers
Title: Manager/President

EPR CONCORD II. L.P., a Delaware limited partnership

By: **EPR TRS HOLDINGS, INC.,**
a Missouri corporation,
its general partner

By: /s/ Gregory K. Silvers
Name: Gregory K. Silvers
Title: Manager/President

ADELAAR DEVELOPER, LLC,
a Delaware limited liability company

By: /s/ Gregory K. Silvers
Name: Gregory K. Silvers
Title: Manager/President

EMPIRE DEVELOPERS:

MONTREIGN OPERATING COMPANY LLC, a New York limited liability company

By: /s/ Joseph D'Amato
Name: Joseph D'Amato
Title: Authorized Signatory

EMPIRE RESORTS REAL ESTATE I, LLC, a New York limited liability company

By: /s/ Joseph D'Amato
Name: Joseph D'Amato
Title: Authorized Signatory

EMPIRE RESORTS REAL ESTATE II, LLC, a New York limited liability company

By: /s/ Joseph D'Amato
Name: Joseph D'Amato
Title: Authorized Signatory

EXHIBIT 10.14

FIRST AMENDMENT TO PURCHASE OPTION AGREEMENT

THIS FIRST AMENDMENT TO PURCHASE OPTION AGREEMENT (the "Amendment") is made and entered this 24th day of January, 2017, by and among Adelaar Developer, LLC, a Delaware limited liability company, EPT Concord II, LLC, a Delaware limited liability company and EPR Concord II, L.P., a Delaware limited partnership (collectively, "Seller") and Montreign Operating Company, LLC, a New York limited liability company ("Buyer").

WHEREAS, on December 28, 2015, Seller and Buyer entered into a Purchase Option Agreement (the "Purchase Option Agreement");

WHEREAS, Seller and Buyer desire to amend the Purchase Option Agreement to update the legal descriptions of the Casino Parcel, Golf Course Parcel and Entertainment Village Parcel (in each case, as defined in the Purchase Option Agreement);

NOW, THEREFORE, Seller and Buyer hereby agree as follows:

1. Exhibit A of the Purchase Option Agreement shall be replaced with a new Exhibit A, a copy of which is annexed hereto.

2. Exhibit B of the Purchase Option Agreement shall be replaced with a new Exhibit B, a copy of which is annexed hereto.

3. Exhibit C of the Purchase Option Agreement shall be replaced with a new Exhibit C, a copy of which is annexed hereto.

4. Exhibit D of the Purchase Option Agreement shall be replaced with a new Exhibit D, a copy of which is annexed hereto.

5. Except as herein amended, all other terms and provisions of the Purchase Option Agreement remain in full force and effect.

[Signatures appear on the following page]

IN WITNESS WHEREOF, Seller and Buyer have executed this Amendment as of the day and year first set forth above.

SELLER:

EPT CONCORD II LLC, a Delaware limited liability company

By: /s/ Gregory K. Silvers
Name: Gregory K. Silvers
Title: Manager/President

EPR CONCORD II, L.P., a Delaware limited partnership

By: /s/ Gregory K. Silvers
Name: Gregory K. Silvers
Title: Manager/President

ADELAAR DEVELOPER, LLC, a Delaware limited liability company

By: /s/ Gregory K. Silvers
Name: Gregory K. Silvers
Title: Manager/President

BUYER:

MONTREIGN OPERATING COMPANY, LLC, a New York limited liability company

By: /s/ Joseph D'Amato
Name: Joseph D'Amato
Title: Authorized Signatory

EXHIBIT 10.18

FIRST AMENDMENT TO CASINO LEASE

THIS FIRST AMENDMENT TO THE CASINO LEASE (the "First Amendment") is made and entered this 24th day of January, 2017 among EPT CONCORD II, LLC, a Delaware limited liability company having offices at 909 Walnut Street, Suite 200, Kansas City, Missouri 64106 ("Landlord"), and Montreign Operating Company, LLC, a New York limited liability company, having an address at 204 State Route 17B, Monticello, New York 12701 ("Tenant") (Landlord and Tenant, collectively, the "Parties").

WITNESSETH:

WHEREAS, on December 28, 2015, the Parties entered into a Lease for the lease of the Casino Parcel, as more fully described in the Lease (the "Casino Lease"); and

WHEREAS, on December 28, 2015, the Parties and certain of their affiliates entered into an Amended and Restated Master Development Agreement (the "MDA");

WHEREAS, pursuant to Section 6.2 of the MDA, the parties to the MDA agreed to fund and allocate between and among them certain Common Infrastructure Costs as such term is defined in the MDA; and

WHEREAS, simultaneously with this First Amendment, the parties to the MDA entered into that certain First Amendment to the MDA to provide for increases to the Common Infrastructure Costs and Capital Assessment Cap Amount (as each such term is defined in the MDA); and

WHEREAS, the Parties desire to enter into this First Amendment to similarly provide for increases to the Capital Assessment Cap Amount, to provide for the closing of the bond financing related to the Common Infrastructure Costs, to modify the definition of Leased Premises, and to correct a scrivener's error in the legal description of the Leased Premises (as defined in the Casino Lease);

NOW, THEREFORE, in consideration of the recitals, the mutual covenants and promises set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. The definition of Leased Premises shall be amended and restated as follows:

> ***"Leased Premises"*** means all Land, and all rights, easements and privileges thereunto belonging or in any way appertaining, and all other rights, easements and privileges granted to Tenant in this Lease, excluding, however, the Improvements and Tenant's Property.

2. Section 5.2(f) of the Casino Lease shall be amended and restated as follows:

Notwithstanding anything herein to the contrary, commencing on the Commencement Date, Tenant shall be responsible for payment of the Special District Capital Assessments levied on the Leased Premises in an amount not to exceed the annual amounts set forth on Schedule 4 hereto in the "Annual Debt Service" table with respect to the Casino Project (the "***Capital Assessments Cap Amount***). Amounts payable pursuant to this Section 5.2(f) shall be paid by Tenant directly to the applicable Governmental Authorities. Landlord shall be responsible for payment of any such Special District Capital Assessments in excess of the Capital Assessments Cap Amount. In the event that Landlord fails to make such payments in a timely manner, Tenant shall have the right (but not the obligation) to make such payments directly to the Governmental Authorities, and Tenant shall receive a deduction from Rent in an amount equal to the excess of any Special District Capital Assessments levied on the Leased Premises, to the extent paid by Tenant to the Governmental Authorities over the Capital Assessments Cap Amount. Furthermore, (i) for so long as the tenant under the Golf Course Lease (as defined in the MDA) is an Affiliate of Tenant, Tenant shall receive a deduction from Rent in an amount equal to any amount actually paid by Tenant or an Affiliate for any Special District Capital Assessments levied on the Golf Course Parcel (as defined in the MDA) in excess of the Capital Assessments Cap Amount (as defined in the Golf Course Lease) which exceeds rent due under the Golf Course Lease in a given month, in accordance with Section 5.3 of the Golf Course Lease and (ii) for so long as the tenant under the Entertainment Village Lease (as defined in the MDA) is an Affiliate of Tenant, Tenant shall receive a deduction from Rent in an amount equal to any amount actually paid by Tenant or an Affiliate for any Special District Capital Assessments levied on the Entertainment Village Parcel (as defined in the MDA) in excess of the Capital Assessments Cap Amount (as defined in the Entertainment Village Lease) which exceeds rent due under the Entertainment Village Lease in a given month, in accordance with Section 5.3 of the Entertainment Village Lease. In the event that Tenant fails to make any payments required under this Section 5.2(f) in a timely manner, Landlord shall have the right (but not the obligation) to make such payments directly to the Governmental Authorities, and the amount of any such payments made by Landlord shall be added to Rent due under this Lease for the following month.

3. Schedule 4 to the Casino Lease shall be replaced with a new Schedule 4, a copy of which is annexed hereto.

4. Exhibit A of the Casino Lease shall be replaced with a new Exhibit A, a copy of which is annexed hereto.

5. Except as herein amended, all other terms and provisions of the Casino Lease remain in full force and effect.

[Signatures appear on the following page]

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be duly executed as of the date first written above.

EPT CONCORD II LLC, a Delaware limited liability company

By: /s/ Gregory K. Silvers
Name: Gregory K. Silvers
Title: Manager/President

MONTREIGN OPERATING COMPANY LLC, a New York limited liability company

By: /s/ Joseph D'Amato
Name: Joseph D'Amato
Title: Authorized Signatory

EXHIBIT 10.20

FIRST AMENDMENT TO ENTERTAINMENT VILLAGE LEASE

THIS FIRST AMENDMENT TO THE ENTERTAINMENT VILLAGE LEASE (the "First Amendment") is made and entered this 24th day of January, 2017 between ADELAAR DEVELOPER, LLC, a Delaware limited liability company having offices at 909 Walnut Street, Suite 200, Kansas City, Missouri 64106 ("Landlord"), and EMPIRE RESORTS REAL ESTATE II, LLC, a New York limited liability company, having an address at 204 State Route 17B, Monticello, New York 12701, ("Tenant") (Landlord and Tenant, collectively, the "Parties").

WITNESSETH:

WHEREAS, on December 28, 2015, the Parties entered into a Sub-Lease for the lease of the Entertainment Village Parcel, as more fully described in the Sub-Lease (the "EV Lease"); and

WHEREAS, on December 28, 2015, the Parties and certain of their affiliates also entered into an Amended and Restated Master Development Agreement (the "MDA");

WHEREAS, pursuant to Section 6.2 of the MDA, the parties to the MDA agreed to fund and allocate between and among them certain Common Infrastructure Costs as such term is defined in the MDA; and

WHEREAS, simultaneously with this First Amendment, the parties to the MDA entered into that certain First Amendment to the MDA to provide for increases to the Common Infrastructure Costs and Capital Assessment Cap Amount (as each such term is defined in the MDA); and

WHEREAS, the Parties desire to enter into this First Amendment to similarly provide for increases to the Capital Assessment Cap Amount, to provide for the closing of the bond financing related to the Common Infrastructure Costs and to update the legal description of the Leased Premises (as defined in the EV Lease);

NOW, THEREFORE, in consideration of the recitals, the mutual covenants and promises set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Section 3.3(a) of the EV Lease shall be amended and restated as follows:

"(a) Landlord holds a valid leasehold interest in and to the Leased Premises"

2. Section 5.3 of the EV Lease shall be amended and restated as follows:

"5.3 **Special District Assessments**. Notwithstanding anything herein to the contrary, commencing on the Conversion Date, Tenant shall be responsible for payment of the Special District Capital Assessments levied on the Leased Premises in an amount not to exceed the annual amounts set forth on Schedule 4 hereto in the "Annual Debt Service Table" with respect to the Entertainment Village Project (the "***Capital Assessments Cap Amount***"), which amount shall be paid by Tenant directly to the applicable Governmental Authorities. Landlord shall be responsible for payment of any such Special District Capital Assessments in excess of the Capital Assessments Cap Amount. In the event that Landlord fails to make such payments in a timely manner, Tenant shall have the right (but not the obligation) to make such payments directly to the Governmental Authorities, and Tenant shall receive a deduction from Rent in an amount equal to any amount actually paid by Tenant or an Affiliate for any Special District Capital Assessments levied on the Leased Premises in excess of the Capital Assessments Cap Amount. Tenant shall also have the right, but not the obligation, to have the Casino Tenant pay such excess amounts that are not paid by Landlord, allowing the Casino Tenant a deduction from Rent pursuant to the terms of the Casino Lease. Special Assessments Limited Guarantor hereby absolutely, irrevocably, and unconditionally guarantees to Landlord the full and timely payment of all Special District Capital Assessments below the Capital Assessments Cap Amount that are payable by Tenant hereunder as and when same shall be due, but only for so long as Tenant is an Affiliate of Special Assessments Limited Guarantor and such guaranty shall expire on and as of the date on which Tenant ceases to be an Affiliate of Special Assessments Limited Guarantor; provided that Special Assessments Limited Guarantor shall remain liable for any unpaid Special District Capital Assessments payable by Tenant hereunder that relate to the period prior to such date. In the event that Tenant fails to make any payments required under this Section 5.3 in a timely manner, Landlord shall have the right (but not the obligation) to make such payments directly to the Governmental Authorities, and the amount of any such payments made by Landlord shall be added to Rent due under this Lease for the following month.

3. Section 5.4 of the EV Lease is hereby deleted in its entirety.

4. Schedule 4 to the EV Lease shall be replaced with a new Schedule 4, a copy of which is annexed hereto.

5. Exhibit A of the EV Lease shall be replaced with a new Exhibit A, a copy of which is annexed hereto.

6. Except as herein amended, all other terms and provisions of the EV Lease remain in full force and effect.

[Signatures appear on the following page]

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be duly executed as of the date first written above.

ADELAAR DEVELOPER, LLC, a Delaware limited liability company

By: /s/ Gregory K. Silvers
Name: Gregory K. Silvers
Title: Manager/President

EMPIRE RESORTS REAL ESTATE II, LLC, a New York limited liability company

By: /s/ Joseph D'Amato
Name: Joseph D'Amato
Title: Authorized Signatory

SPECIAL ASSESSMENTS LIMTIED GUARANTOR:

EMPIRE RESORTS, INC., a Delaware corporation

By: /s/ Joseph D'Amato
Name: Joseph D'Amato
Title: Authorized Signatory

EXHIBIT 10.22

FIRST AMENDMENT TO GOLF COURSE LEASE

THIS FIRST AMENDMENT TO THE GOLF COURSE LEASE (the "First Amendment") is made and entered this 24th day of January, 2017 between ADELAAR DEVELOPER, LLC, a Delaware limited liability company having offices at 909 Walnut Street, Suite 200, Kansas City, Missouri 64106 ("Landlord"), and EMPIRE RESORTS REAL ESTATE I, LLC, a New York limited liability company, having an address at 204 State Route 17B, Monticello, New York 12701, ("Tenant") (Landlord and Tenant, collectively, the "Parties").

WITNESSETH:

WHEREAS, on December 28, 2015, the Parties entered into a Sub-Lease for the lease of the Golf Course Parcel, as more fully described in the Sub-Lease (the "GC Lease"); and

WHEREAS, on December 28, 2015, the Parties and certain of their affiliates also entered into an Amended and Restated Master Development Agreement (the "MDA");

WHEREAS, pursuant to Section 6.2 of the MDA, the parties to the MDA agreed to fund and allocate between and among them certain Common Infrastructure Costs as such term is defined in the MDA; and

WHEREAS, simultaneously with this First Amendment, the parties to the MDA entered into that certain First Amendment to the MDA to provide for increases to the Common Infrastructure Costs and Capital Assessment Cap Amount (as each such term is defined in the MDA); and

WHEREAS, the Parties desire to enter into this First Amendment to similarly provide for increases to the Capital Assessment Cap Amount, to provide for the closing of the bond financing related to the Common Infrastructure Costs and to update the legal description of the Leased Premises (as defined in the GC Lease);

NOW, THEREFORE, in consideration of the recitals, the mutual covenants and promises set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Section 3.3(a) of the GC Lease shall be amended and restated as follows:

"(a) Landlord holds a valid leasehold interest in and to the Leased Premises"

2. Section 5.3 of the GC Lease shall be amended and restated as follows:

"5.3 **Special District Assessments**. Notwithstanding anything herein to the contrary, commencing on the Conversion Date, Tenant shall be responsible for payment of the Special District Capital Assessments levied on the Leased Premises in an amount not to exceed the annual amounts set forth on Schedule 4 hereto in the "Annual Debt Service Table" with respect to the Golf Course Project (the "***Capital Assessments Cap Amount***"), which amount shall be paid by Tenant directly to the applicable Governmental Authorities. Landlord shall be responsible for payment of any such Special District Capital Assessments in excess of the Capital Assessments Cap Amount. In the event that Landlord fails to make such payments in a timely manner, Tenant shall have the right (but not the obligation) to make such payments directly to the Governmental Authorities, and Tenant shall receive a deduction from Rent in an amount equal to any amount actually paid by Tenant or an Affiliate for any Special District Capital Assessments levied on the Leased Premises in excess of the Capital Assessments Cap Amount. Tenant shall also have the right, but not the obligation, to have the Casino Tenant pay such excess amounts that are not paid by Landlord, allowing the Casino Tenant a deduction from Rent pursuant to the terms of the Casino Lease. Special Assessments Limited Guarantor hereby absolutely, irrevocably, and unconditionally guarantees to Landlord the full and timely payment of all Special District Capital Assessments below the Capital Assessments Cap Amount that are payable by Tenant hereunder as and when same shall be due, but only for so long as Tenant is an Affiliate of Special Assessments Limited Guarantor and such guaranty shall expire on and as of the date on which Tenant ceases to be an Affiliate of Special Assessments Limited Guarantor; provided that Special Assessments Limited Guarantor shall remain liable for any unpaid Special District Capital Assessments payable by Tenant hereunder that relate to the period prior to such date. In the event that Tenant fails to make any payments required under this Section 5.3 in a timely manner, Landlord shall have the right (but not the obligation) to make such payments directly to the Governmental Authorities, and the amount of any such payments made by Landlord shall be added to Rent due under this Lease for the following month.

3. Section 5.4 of the GC Lease is hereby deleted in its entirety.

4. Schedule 4 to the GC Lease shall be replaced with a new Schedule 4, a copy of which is annexed hereto.

5. Exhibit A of the GC Lease shall be replaced with a new Exhibit A, a copy of which is annexed hereto.

6. Except as herein amended, all other terms and provisions of the GC Lease remain in full force and effect.

[Signatures appear on the following page]

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be duly executed as of the date first written above.

ADELAAR DEVELOPER, LLC, a Delaware limited liability company

By: /s/ Gregory K. Silvers
Name: Gregory K. Silvers
Title: Manager/President

EMPIRE RESORTS REAL ESTATE I, LLC, a New York limited liability company

By: /s/ Joseph D'Amato
Name: Joseph D'Amato
Title: Authorized Signatory

SPECIAL ASSESSMENTS LIMTIED GUARANTOR:

EMPIRE RESORTS, INC., a Delaware corporation

By: /s/ Joseph D'Amato
Name: Joseph D'Amato
Title: Authorized Signatory

Exhibit 10.26

EMPIRE RESORTS, INC.
AMENDED AND RESTATED
2015 EQUITY INCENTIVE PLAN

1. *Purpose*. The purpose of the Empire Resorts, Inc. 2015 Equity Incentive Plan is to provide a means through which the Company and its Affiliates may attract and retain key personnel and to provide a means whereby directors, officers, managers, employees, consultants and advisors of the Company and its Affiliates can acquire and maintain an equity interest in the Company, or be paid incentive compensation, which may (but need not) be measured by reference to the value of Common Shares, thereby strengthening their commitment to the welfare of the Company and its Affiliates and aligning their interests with those of the Company's stockholders.

2. *Definitions*. The following definitions shall be applicable throughout this Plan:

(a) "*Affiliate*" means (i) any person or entity that directly or indirectly controls, is controlled by or is under common control with the Company and/or (ii) to the extent provided by the Committee, any person or entity in which the Company has a significant interest as determined by the Committee in its discretion. The term "control" (including, with correlative meaning, the terms "controlled by" and "under common control with"), as applied to any person or entity, means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such person or entity, whether through the ownership of voting or other securities, by contract or otherwise.

(b) "*Award*" means, individually or collectively, any Incentive Stock Option, Nonqualified Stock Option, Stock Appreciation Right, Restricted Stock, Restricted Stock Unit, Stock Bonus Award or Performance Compensation Award granted under this Plan.

(c) "*Award Agreement*" means an agreement made and delivered in accordance with Section 15(a) of this Plan evidencing the grant of an Award hereunder.

(d) "*Board*" means the Board of Directors of the Company.

(e) *"Business Day"* means any day other than a Saturday, a Sunday or a day on which banking institutions in New York City are authorized or obligated by federal law or executive order to be closed.

(f) "*Cause*" means, in the case of a particular Award, unless the applicable Award Agreement states otherwise, (i) the Company or an Affiliate having "cause" to terminate a Participant's employment or service, as defined in any employment or consulting agreement or similar document or policy between the Participant and the Company or an Affiliate in effect at the time of such termination or (ii) in the absence of any such employment or consulting agreement, document or policy (or the absence of any definition of "Cause" contained therein), (A) a continuing

material breach or material default (including, without limitation, any material dereliction of duty) by Participant of any agreement between the Participant and the Company, except for any such breach or default which is caused by the physical disability of the Participant (as determined by a neutral physician), or a continuing failure by the Participant to follow the direction of a duly authorized representative of the Company; (B) gross negligence, willful misfeasance or breach of fiduciary duty to the Company or Affiliate of the Company by the Participant; (C) the commission by the Participant of an act of fraud, embezzlement or any felony or other crime of dishonesty in connection with the Participant's duties to the Company or Affiliate of the Company; or (D) conviction of the Participant of a felony or any other crime that would materially and adversely affect: (i) the business reputation of the Company or Affiliate of the Company or (ii) the performance of the Participant's duties to the Company or an Affiliate of the Company. Any determination of whether Cause exists shall be made by the Committee in its sole discretion.

(g) "*Change in Control*" shall, in the case of a particular Award, unless the applicable Award Agreement states otherwise or contains a different definition of "Change in Control," be deemed to occur upon:

(i) A tender offer (or series of related offers) shall be made and consummated for the ownership of 50% or more of the outstanding voting securities of the Company, unless as a result of such tender offer more than 50% of the outstanding voting securities of the surviving or resulting corporation or entity shall be owned in the aggregate by (A) the shareholders of the Company (as of the time immediately prior to the commencement of such offer), or (B) any employee benefit plan of the Company or its Subsidiaries, and their Affiliates;

(ii) The Company shall be merged or consolidated with another corporation, unless as a result of such merger or consolidation more than 50% of the outstanding voting securities of the surviving or resulting corporation or entity shall be owned in the aggregate by (A) the shareholders of the Company (as of the time immediately prior to such transaction); provided, that a merger or consolidation of the Company with another company which is controlled by persons owning more than 50% of the outstanding voting securities of the Company shall constitute a Change in Control unless the Committee, in its discretion, determine otherwise, or (B) any employee benefit plan of the Company or its Subsidiaries, and their Affiliates;

(iii) The Company shall sell substantially all of its assets to another entity that is not wholly owned by the Company, unless as a result of such sale more than 50% of such assets shall be owned in the aggregate by (A) the shareholders of the Company (as of the time immediately prior to such transaction), or (B) any employee benefit plan of the Company or its Subsidiaries, and their Affiliates;

(iv) A Person (as defined below) shall acquire 50% or more of the outstanding voting securities of the Company (whether directly, indirectly, beneficially or of record), unless as a result of such acquisition more than 50% of the outstanding voting securities of the surviving or resulting corporation or entity shall be owned in the aggregate by (A) the shareholders of the Company (as of the time immediately prior to the first acquisition of such securities by such

Person), or (B) any employee benefit plan of the Company or its Subsidiaries, and their Affiliates; or

(v) The individuals who, as of the date hereof, constitute the members of the Board (the "Current Board Members") cease, by reason of a financing, merger, combination, acquisition, takeover or other non-ordinary course transaction affecting the Company, to constitute at least a majority of the members of the Board unless such change is approved by the Current Board Members.

For purposes of this Section 2(g), ownership of voting securities shall take into account and shall include ownership as determined by applying the provisions of Rule 13d-3(d)(I)(i) (as in effect on the date hereof) under the Securities Exchange Act of 1934, as amended (the "Exchange Act"). In addition, for such purposes, "Person" shall have the meaning given in Section 3(a)(9) of the Exchange Act, as modified and used in Sections 13(d) and 14(d) thereof; however, a Person shall not include (A) the Company or any of its Subsidiaries; (B) a trustee or other fiduciary holding securities under an employee benefit plan of the Company or any of its Subsidiaries; (C) an underwriter temporarily holding securities pursuant to an offering of such securities; or (D) a corporation owned, directly or indirectly, by the shareholders of the Company in substantially the same proportion as their ownership of stock of the Company.

(h) "*Code*" means the Internal Revenue Code of 1986, as amended, and any successor thereto. References in this Plan to any section of the Code shall be deemed to include any regulations or other interpretative guidance issued by any governmental authority under such section, and any amendments or successor provisions to such section, regulations or guidance.

(i) "*Committee*" means a committee of at least two people as the Board may appoint to administer this Plan or, if no such committee has been appointed by the Board, the Board. Unless altered by an action of the Board, the Committee shall be the Compensation Committee of the Board.

(j) "*Common Shares*" means the common stock, par value $0.01 per share, of the Company (and any stock or other securities into which such common shares may be converted or into which they may be exchanged).

(k) "*Company*" means Empire Resorts, Inc., a Delaware corporation, together with its successors and assigns.

(l) "*Current Board Members*" has the meaning given such term in the definition of "Change in Control."

(m) "*Date of Grant*" means the date on which the granting of an Award is authorized, or such other date as may be specified in such authorization.

(n) "*Disability*" means a "permanent and total" disability incurred by a Participant while in the employ or service of the Company or an Affiliate. For this purpose, a

permanent and total disability shall mean that the Participant is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment that can be expected to result in death or can be expected to last for a continuous period of not less than twelve (12) months. The determination of whether a Participant has incurred a permanent and total disability shall be made by a physician designated by the Committee, whose determination shall be final and binding.

(o) "*Effective Date*" means the date as of which this Plan is adopted by the Board, subject to Section 3 of this Plan.

(p) "*Eligible Director*" means a person who is (i) a "non-employee director" within the meaning of Rule 16b-3 under the Exchange Act, and (ii) an "outside director" within the meaning of Section 162(m) of the Code.

(q) "*Eligible Person*" means any (i) individual employed by the Company or an Affiliate; *provided, however*, that no such employee covered by a collective bargaining agreement shall be an Eligible Person unless and to the extent that such eligibility is set forth in such collective bargaining agreement or in an agreement or instrument relating thereto; (ii) director of the Company or an Affiliate; or (iii) consultant or advisor to the Company or an Affiliate, provided that if the Securities Act applies such persons must be eligible to be offered securities registrable on Form S-8 under the Securities Act.

(r) "*Exchange Act*" has the meaning given such term in the definition of "Change in Control," and any reference in this Plan to any section of (or rule promulgated under) the Exchange Act shall be deemed to include any rules, regulations or other interpretative guidance issued by any governmental authority under such section or rule, and any amendments or successor provisions to such section, rules, regulations or guidance.

(s) "*Exercise Price*" has the meaning given such term in Section 7(b) of this Plan.

(t) "*Fair Market Value*", unless otherwise provided by the Committee in accordance with all applicable laws, rules regulations and standards, means, on a given date, (i) if the Common Shares are listed on a national securities exchange, the closing sales price on the principal exchange of the Common Shares on such date or, in the absence of reported sales on such date, the closing sales price on the immediately preceding date on which sales were reported, or (ii) if the Common Shares are not listed on a national securities exchange, the mean between the bid and offered prices as quoted by any nationally recognized interdealer quotation system for such date, provided that if the Common Shares are not quoted on an interdealer quotation system or it is determined that the fair market value is not properly reflected by such quotations, Fair Market Value will be determined by such other method as the Committee determines in good faith to be reasonable and in compliance with Code Section 409A.

(u) "*Immediate Family Members*" shall have the meaning set forth in Section 15(b) of this Plan.

(v) "*Incentive Stock Option*" means an Option that is designated by the Committee as an incentive stock option as described in Section 422 of the Code and otherwise meets the requirements set forth in this Plan.

(w) "*Indemnifiable Person*" shall have the meaning set forth in Section 4(e) of this Plan.

(x) "*Negative Discretion*" shall mean the discretion authorized by this Plan to be applied by the Committee to eliminate or reduce the size of a Performance Compensation Award consistent with Section 162(m) of the Code.

(y) "*Nonqualified Stock Option*" means an Option that is not designated by the Committee as an Incentive Stock Option.

(z) "*Option*" means an Award granted under Section 7 of this Plan.

(aa) "*Option Period*" has the meaning given such term in Section 7(c) of this Plan.

(ab) "*Participant*" means an Eligible Person who has been selected by the Committee to participate in this Plan and to receive an Award pursuant to Section 6 of this Plan.

(ac) "*Performance Compensation Award*" shall mean any Award designated by the Committee as a Performance Compensation Award pursuant to Section 11 of this Plan.

(ad) "*Performance Criteria*" shall mean the criterion or criteria that the Committee shall select for purposes of establishing the Performance Goal(s) for a Performance Period with respect to any Performance Compensation Award under this Plan.

(ae) "*Performance Formula*" shall mean, for a Performance Period, the one or more objective formulae applied against the relevant Performance Goal to determine, with regard to the Performance Compensation Award of a particular Participant, whether all, some portion but less than all, or none of the Performance Compensation Award has been earned for the Performance Period.

(af) "*Performance Goals*" shall mean, for a Performance Period, the one or more goals established by the Committee for the Performance Period based upon the Performance Criteria.

(ag) "*Performance Period*" shall mean the one or more periods of time, as the Committee may select, over which the attainment of one or more Performance Goals will be measured for the purpose of determining a Participant's right to, and the payment of, a Performance Compensation Award.

(ah) "*Permitted Transferee*" shall have the meaning set forth in Section 15(b) of this Plan.

(ai) "*Person*" has the meaning given such term in the definition of "Change in Control."

(aj) "*Plan*" means this Empire Resorts, Inc. 2015 Equity Incentive Plan, as amended from time to time.

(ak) "*Retirement*" means the fulfillment of each of the following conditions: (i) the Participant is in good standing with the Company and/or an Affiliate of the Company as determined by the Committee; (ii) the voluntary termination by a Participant of such Participant's employment or service to the Company and/or an Affiliate and (iii) that at the time of such voluntary termination, the sum of: (A) the Participant's age (calculated to the nearest month, with any resulting fraction of a year being calculated as the number of months in the year divided by 12) and (B) the Participant's years of employment or service with the Company (calculated to the nearest month, with any resulting fraction of a year being calculated as the number of months in the year divided by 12) equals at least 62 (provided that, in any case, the foregoing shall only be applicable if, at the time of such Retirement, the Participant shall be at least 55 years of age and shall have been employed by or served with the Company for no less than five years).

(al) "*Restricted Period*" means the period of time determined by the Committee during which an Award is subject to restrictions or, as applicable, the period of time within which performance is measured for purposes of determining whether an Award has been earned.

(am) "*Restricted Stock Unit*" means an unfunded and unsecured promise to deliver Common Shares, cash, other securities or other property, subject to certain restrictions (including, without limitation, a requirement that the Participant remain continuously employed or provide continuous services for a specified period of time), granted under Section 9 of this Plan.

(an) "*Restricted Stock*" means Common Shares, subject to certain specified restrictions (including, without limitation, a requirement that the Participant remain continuously employed or provide continuous services for a specified period of time), granted under Section 9 of this Plan.

(ao) "*SAR Period*" has the meaning given such term in Section 8(c) of this Plan.

(ap) "*Securities Act*" means the Securities Act of 1933, as amended, and any successor thereto. Reference in this Plan to any section of the Securities Act shall be deemed to include any rules, regulations or other official interpretative guidance issued by any governmental authority under such section, and any amendments or successor provisions to such section, rules, regulations or guidance.

(aq) "*Stock Appreciation Right*" or *"SAR"* means an Award granted under Section 8 of this Plan which meets all of the requirements of Section 1.409A-1(b)(5)(i)(B) of the Treasury Regulations.

(ar) "*Stock Bonus Award*" means an Award granted under Section 10 of this Plan.

(as) "*Strike Price*" means, except as otherwise provided by the Committee in the case of Substitute Awards, (i) in the case of a SAR granted in tandem with an Option, the Exercise

Price of the related Option, or (ii) in the case of a SAR granted independent of an Option, the Fair Market Value of Common Shares on the Date of Grant.

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

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

(ii) any partnership or limited liability company (or any comparable foreign entity) (a) the sole general partner or managing member (or functional equivalent thereof) or the managing general partner of which is such Person or Subsidiary of such Person or (b) the only general partners or managing members (or functional equivalents thereof) of which are that Person or one or more Subsidiaries of that Person (or any combination thereof).

(au) "*Substitute Award*" has the meaning given such term in Section 5(e).

(av) "*Treasury Regulations*" means any regulations, whether proposed, temporary or final, promulgated by the U.S. Department of Treasury under the Code, and any successor provisions.

3. *Effective Date; Duration*. The Plan shall be effective on November 2, 2015, the date on which it is approved by the stockholders of the Company, which date shall be within twelve (12) months before or after the date of the Plan's adoption by the Board. The expiration date of this Plan, on and after which date no Awards may be granted hereunder, shall be November 2, 2025, the tenth anniversary of the date on which the Plan was approved by the stockholders of the Company; *provided, however*, that such expiration shall not affect Awards then outstanding, and the terms and conditions of this Plan shall continue to apply to such Awards.

4. *Administration*.

(a) The Committee shall administer this Plan. To the extent required to comply with the provisions of Rule 16b-3 promulgated under the Exchange Act (if the Board is not acting as the Committee under this Plan) or necessary to obtain the exception for performance-based compensation under Section 162(m) of the Code, as applicable, it is intended that each member of the Committee shall, at the time he takes any action with respect to an Award under this Plan, be an Eligible Director. However, the fact that a Committee member shall fail to qualify as an Eligible Director shall not invalidate any Award granted by the Committee that is otherwise validly granted under this Plan. The acts of a majority of the members present at any meeting at which a quorum is present or acts approved in writing by a majority of the Committee shall be deemed the acts of the Committee. Whether a quorum is present shall be determined based on the Committee's charter as approved by the Board.

(b) Subject to the provisions of this Plan and applicable law, the Committee shall have the sole and plenary authority, in addition to other express powers and authorizations conferred on the Committee by this Plan and its charter, to: (i) designate Participants; (ii) determine the type or types of Awards to be granted to a Participant; (iii) determine the number of Common Shares to

be covered by, or with respect to which payments, rights, or other matters are to be calculated in connection with, Awards; (iv) determine the terms and conditions of any Award; (v) determine whether, to what extent, and under what circumstances Awards may be settled or exercised in cash, Common Shares, other securities, other Awards or other property, or canceled, forfeited, or suspended, and the method or methods by which Awards may be settled, exercised, canceled, forfeited, or suspended; (vi) determine whether, to what extent, and under what circumstances the delivery of cash, Common Shares, other securities, other Awards or other property and other amounts payable with respect to an Award shall be made; (vii) interpret, administer, reconcile any inconsistency in, settle any controversy regarding, correct any defect in and/or complete any omission in this Plan and any instrument or agreement relating to, or Award granted under, this Plan; (viii) establish, amend, suspend, or waive any rules and regulations and appoint such agents as the Committee shall deem appropriate for the proper administration of this Plan; (ix) accelerate the vesting or exercisability of, payment for or lapse of restrictions on, Awards; (x) to reprice existing Awards or to grant Awards in connection with or in consideration of the cancellation of an outstanding Award with a higher price; and (xi) make any other determination and take any other action that the Committee deems necessary or desirable for the administration of this Plan.

(c) The Committee may, by resolution, expressly delegate to a special committee, consisting of one or more directors who may but need not be officers of the Company, the authority, within specified parameters as to the number and types of Awards, to (i) designate officers and/or employees of the Company or any of its Affiliates to be recipients of Awards under this Plan, and (ii) to determine the number of such Awards to be received by any such Participants; provided, however, that such delegation of duties and responsibilities may not be made with respect to grants of Awards to persons (i) subject to Section 16 of the Exchange Act or (ii) who are, or who are reasonably expected to be, "covered employees" for purposes of Section 162(m) of the Code. The acts of such delegates shall be treated as acts of the Committee, and such delegates shall report regularly to the Board and the Committee regarding the delegated duties and responsibilities and any Awards granted.

(d) Unless otherwise expressly provided in this Plan, all designations, determinations, interpretations, and other decisions under or with respect to this Plan or any Award or any documents evidencing Awards granted pursuant to this Plan shall be within the sole discretion of the Committee, may be made at any time and shall be final, conclusive and binding upon all persons or entities, including, without limitation, the Company, any Affiliate, any Participant, any holder or beneficiary of any Award, and any stockholder of the Company.

(e) No member of the Board, the Committee, delegate of the Committee or any employee, advisor or agent of the Company or the Board or the Committee (each such person, an "*Indemnifiable Person*") shall be liable for any action taken or omitted to be taken or any determination made in good faith with respect to this Plan or any Award hereunder. Each Indemnifiable Person shall be indemnified and held harmless by the Company against and from (and the Company shall pay or reimburse on demand for) any loss, cost, liability, or expense (including court costs and attorneys' fees) that may be imposed upon or incurred by such Indemnifiable Person in connection with or resulting from any action, suit or proceeding to which such Indemnifiable Person may be a party or in which such Indemnifiable Person may be involved

by reason of any action taken or omitted to be taken under this Plan or any Award Agreement and against and from any and all amounts paid by such Indemnifiable Person with the Company's approval, in settlement thereof, or paid by such Indemnifiable Person in satisfaction of any judgment in any such action, suit or proceeding against such Indemnifiable Person, provided, that the Company shall have the right, at its own expense, to assume and defend any such action, suit or proceeding and once the Company gives notice of its intent to assume the defense, the Company shall have sole control over such defense with counsel of the Company's choice. The foregoing right of indemnification shall not be available to an Indemnifiable Person to the extent that a final judgment or other final adjudication (in either case not subject to further appeal) binding upon such Indemnifiable Person determines that the acts or omissions of such Indemnifiable Person giving rise to the indemnification claim resulted from such Indemnifiable Person's bad faith, fraud or willful criminal act or omission or that such right of indemnification is otherwise prohibited by law or by the Company's Certificate of Incorporation or Bylaws. The foregoing right of indemnification shall not be exclusive of any other rights of indemnification to which any such Indemnifiable Person may be entitled under the Company's Certificate of Incorporation or Bylaws, as a matter of law, or otherwise, or any other power that the Company may have to indemnify such Indemnifiable Persons or hold them harmless.

(f) Notwithstanding anything to the contrary contained in this Plan, the Board may, in its sole discretion, at any time and from time to time, grant Awards and administer this Plan with respect to such Awards. In any such case, the Board shall have all the authority granted to the Committee under this Plan.

5. *Grant of Awards; Shares Subject to this Plan; Limitations.*

(a) The Committee may, from time to time, grant Options, Stock Appreciation Rights, Restricted Stock, Restricted Stock Units, Stock Bonus Awards and/or Performance Compensation Awards to one or more Eligible Persons.

(b) Subject to Section 12 of this Plan, the Committee is authorized to deliver under this Plan an aggregate of 4,762,490 Common Shares; *provided, however*, that on the 90th day after the Company is awarded a gaming facility license by the New York State Gaming Commission with respect to the Montreign Resort Casino (the "Trigger Date"), the maximum number of Common Shares that may be delivered under the Plan shall automatically increase by the lesser of: (i) 8,166,046 Common Shares; (ii) such number of Common Shares as will increase the aggregate number of Common Shares that may be delivered under this Plan to be equal to 10% of the issued and outstanding Common Shares of the Company on the Trigger Date; and (iii) such number of Common Shares as the Committee otherwise determines.

(c) Common Shares underlying Awards under this Plan that are forfeited, cancelled, expire unexercised, or are settled in cash shall be available again for Awards under this Plan at the same ratio at which they were previously granted. Notwithstanding the foregoing, the following Common Shares shall not be available again for Awards under the Plan: (i) shares tendered or held back upon the exercise of an Option or settlement of an Award to cover the Exercise Price of an Award; (ii) shares that are used or withheld to satisfy tax withholding obligations of the

Participant; and (iii) shares subject to a Stock Appreciation Right that are not issued in connection with the stock settlement of the SAR upon exercise thereof.

(d) Common Shares delivered by the Company in settlement of Awards may be authorized and unissued shares, shares held in the treasury of the Company, shares purchased on the open market or by private purchase, or any combination of the foregoing.

(e) Subject to compliance with Section 1.409A-3(f) of the Treasury Regulations, Awards may, in the sole discretion of the Committee, be granted under this Plan in assumption of, or in substitution for, outstanding awards previously granted by an entity acquired by the Company or with which the Company combines ("*Substitute Awards*"). The number of Common Shares underlying any Substitute Awards shall be counted against the aggregate number of Common Shares available for Awards under this Plan.

(f) Notwithstanding any provision in the Plan to the contrary (but subject to adjustment as provided in Section 12), the Committee shall not grant to any one Eligible Person in any one calendar year Awards (i) for more than 50% of the Available Shares in the aggregate or (ii) payable in cash in an amount exceeding $10,000,000 in the aggregate.

6. *Eligibility*. Participation shall be limited to Eligible Persons who have entered into an Award Agreement or who have received written notification from the Committee, or from a person designated by the Committee, that they have been selected to participate in this Plan.

7. *Options*.

(a) *Generally*. Each Option granted under this Plan shall be evidenced by an Award Agreement (whether in paper or electronic medium (including email or the posting on a web site maintained by the Company or a third party under contract with the Company)). Each Option so granted shall be subject to the conditions set forth in this Section 7, and to such other conditions not inconsistent with this Plan as may be reflected in the applicable Award Agreement. All Options granted under this Plan shall be Nonqualified Stock Options unless the applicable Award Agreement expressly states that the Option is intended to be an Incentive Stock Option. Notwithstanding any designation of an Option, to the extent that the aggregate Fair Market Value of Common Shares with respect to which Options designated as Incentive Stock Options are exercisable for the first time by any Participant during any calendar year (under all plans of the Company or any Subsidiary) exceeds $100,000, such excess Options shall be treated as Nonqualified Stock Options. Incentive Stock Options shall be granted only to Eligible Persons who are employees of the Company and its Affiliates, and no Incentive Stock Option shall be granted to any Eligible Person who is ineligible to receive an Incentive Stock Option under the Code. No Option shall be treated as an Incentive Stock Option unless this Plan has been approved by the stockholders of the Company in a manner intended to comply with the stockholder approval requirements of Section 422(b)(1) of the Code, provided that any Option intended to be an Incentive Stock Option shall not fail to be effective solely on account of a failure to obtain such approval, but rather such Option shall be treated as a Nonqualified Stock Option unless and until such approval is obtained. In the case of an Incentive Stock Option, the terms and conditions of such grant shall be subject to and comply with such rules as may be prescribed by Section 422 of the Code. If for any reason an Option intended to be an

Incentive Stock Option (or any portion thereof) shall not qualify as an Incentive Stock Option, then, to the extent of such nonqualification, such Option or portion thereof shall be regarded as a Nonqualified Stock Option appropriately granted under this Plan.

(b) *Exercise Price*. The exercise price ("*Exercise Price*") per Common Share for each Option shall not be less than 100% of the Fair Market Value of such share determined as of the Date of Grant; *provided, however*, that in the case of an Incentive Stock Option granted to an employee who, at the time of the grant of such Option, owns shares representing more than 10% of the voting power of all classes of shares of the Company or any Affiliate, the Exercise Price per share shall not be less than 110% of the Fair Market Value per share on the Date of Grant; *and, provided further,* that notwithstanding any provision herein to the contrary, the Exercise Price shall not be less than the par value per Common Share.

(c) *Vesting and Expiration*. Options shall vest and become exercisable in such manner and on such date or dates determined by the Committee and as set forth in the applicable Award Agreement, and shall expire after such period, not to exceed ten (10) years from the Date of Grant, as may be determined by the Committee (the "*Option Period*"); *provided, however*, that the Option Period shall not exceed five (5) years from the Date of Grant in the case of an Incentive Stock Option granted to a Participant who on the Date of Grant owns shares representing more than 10% of the voting power of all classes of shares of the Company or any Affiliate; *and, provided, further*, that notwithstanding any vesting dates set by the Committee, the Committee may, in its sole discretion, accelerate the exercisability of any Option, which acceleration shall not affect the terms and conditions of such Option other than with respect to exercisability. Unless otherwise provided by the Committee in an Award Agreement:

(i) an Option shall vest and become exercisable with respect to 100% of the Common Shares subject to such Option on each anniversary of the Date of Grant;

(ii) the unvested portion of an Option shall expire upon termination of employment or service of the Participant granted the Option, and the vested portion of such Option shall remain exercisable for:

(A) one year following termination of employment or service by reason of such Participant's death or Disability (with the determination of Disability to be made by the Committee on a case by case basis), but not later than the expiration of the Option Period;

(B) for directors, officers and employees of the Company only, for ninety (90) days following termination of employment or service by reason of such Participant's Retirement;

(C) 90 calendar days following termination of employment or service for any reason other than such Participant's death, Disability or Retirement, and other than such Participant's termination of employment or service for Cause, but not later than the expiration of the Option Period; and

(iii) both the unvested and the vested portion of an Option shall immediately expire upon the termination of the Participant's employment or service by the Company for Cause.

Notwithstanding the foregoing provisions of Section 7(c) and consistent with the requirements of applicable law, the Committee, in its sole discretion, may extend the post-termination of employment period during which a Participant may exercise vested Options.

(d) *Method of Exercise and Form of Payment*. No Common Shares shall be delivered pursuant to the exercise of an Option until payment in full of the Exercise Price therefor is received by the Company and the Participant has paid to the Company an amount equal to any federal, state, local and/or foreign income and employment taxes required to be withheld. Options that have become exercisable may be exercised by delivery of written or electronic notice of exercise to the Company in accordance with the terms of the Award Agreement accompanied by payment of the Exercise Price. The Exercise Price shall be payable (i) in cash, check (subject to collection), cash equivalent and/or vested Common Shares valued at the Fair Market Value at the time the Option is exercised (including, pursuant to procedures approved by the Committee, by means of attestation of ownership of a sufficient number of Common Shares in lieu of actual delivery of such shares to the Company); *provided, however,* that such Common Shares are not subject to any pledge or other security interest and; (ii) by such other method as the Committee may permit in accordance with applicable law, in its sole discretion, including without limitation: (A) in other property having a fair market value (as determined by the Committee in its discretion) on the date of exercise equal to the Exercise Price or (B) if there is a public market for the Common Shares at such time, by means of a broker-assisted "cashless exercise" pursuant to which the Company is delivered a copy of irrevocable instructions to a stockbroker to sell the Common Shares otherwise deliverable upon the exercise of the Option and to deliver promptly to the Company an amount equal to the Exercise Price or (C) by a "net exercise" method whereby the Company withholds from the delivery of the Common Shares for which the Option was exercised that number of Common Shares having a Fair Market Value equal to the aggregate Exercise Price for the Common Shares for which the Option was exercised. Any fractional Common Shares shall be settled in cash.

(e) *Notification upon Disqualifying Disposition of an Incentive Stock Option*. Each Participant awarded an Incentive Stock Option under this Plan shall notify the Company in writing immediately after the date he makes a disqualifying disposition of any Common Shares acquired pursuant to the exercise of such Incentive Stock Option. A disqualifying disposition is any disposition (including, without limitation, any sale) of such Common Shares before the later of (A) two years after the Date of Grant of the Incentive Stock Option or (B) one year after the date of exercise of the Incentive Stock Option. The Company may, if determined by the Committee and in accordance with procedures established by the Committee, retain possession of any Common Shares acquired pursuant to the exercise of an Incentive Stock Option as agent for the applicable Participant until the end of the period described in the preceding sentence.

(f) *Compliance with Laws, etc*. Notwithstanding the foregoing, in no event shall a Participant be permitted to exercise an Option in a manner that the Committee determines would violate the Sarbanes-Oxley Act of 2002, if applicable, or any other applicable law or the applicable rules and regulations of the Securities and Exchange Commission or the applicable rules and

regulations of any securities exchange or inter-dealer quotation system on which the securities of the Company are listed or traded.

8. *Stock Appreciation Rights*.

(a) *Generally*. Each SAR granted under this Plan shall be evidenced by an Award Agreement (whether in paper or electronic medium (including email or the posting on a web site maintained by the Company or a third party under contract with the Company)). Each SAR so granted shall be subject to the conditions set forth in this Section 8, and to such other conditions not inconsistent with this Plan as may be reflected in the applicable Award Agreement. Any Option granted under this Plan may include tandem SARs (i.e., SARs granted in conjunction with an Award of Options under this Plan). The Committee also may award SARs to Eligible Persons independent of any Option.

(b) *Exercise Price.* The Exercise Price per Common Share for each Option granted in connection with a SAR shall not be less than 100% of the Fair Market Value of such share determined as of the Date of Grant.

(c) *Vesting and Expiration*. A SAR granted in connection with an Option shall become exercisable and shall expire according to the same vesting schedule and expiration provisions as the corresponding Option. A SAR granted independent of an Option shall vest and become exercisable and shall expire in such manner and on such date or dates determined by the Committee and shall expire after such period, not to exceed ten years, as may be determined by the Committee (the "*SAR Period*"); *provided, however*, that notwithstanding any vesting dates set by the Committee, the Committee may, in its sole discretion, accelerate the exercisability of any SAR, which acceleration shall not affect the terms and conditions of such SAR other than with respect to exercisability. Unless otherwise provided by the Committee in an Award Agreement:

(i) a SAR shall vest and become exercisable with respect to 100% of the Common Shares subject to such SAR on the third anniversary of the Date of Grant;

(ii) the unvested portion of a SAR shall expire upon termination of employment or service of the Participant granted the SAR, and the vested portion of such SAR shall remain exercisable for:

(A) one year following termination of employment or service by reason of such Participant's death or Disability (with the determination of Disability to be made by the Committee on a case by case basis), but not later than the expiration of the SAR Period;

(B) for directors, officers and employees of the Company only, for the remainder of the SAR Period following termination of employment or service by reason of such Participant's Retirement;

(C) 90 calendar days following termination of employment or service for any reason other than such Participant's death, Disability or Retirement, and other than such Participant's termination of employment or service for Cause, but not later than the expiration of the SAR Period; and

(iii) both the unvested and the vested portion of a SAR shall expire immediately upon the termination of the Participant's employment or service by the Company for Cause.

(d) *Method of Exercise*. SARs that have become exercisable may be exercised by delivery of written or electronic notice of exercise to the Company in accordance with the terms of the Award, specifying the number of SARs to be exercised and the date on which such SARs were awarded. Notwithstanding the foregoing, if on the last day of the Option Period (or in the case of a SAR independent of an Option, the SAR Period), the Fair Market Value exceeds the Strike Price, the Participant has not exercised the SAR or the corresponding Option (if applicable), and neither the SAR nor the corresponding Option (if applicable) has expired, such SAR shall be deemed to have been exercised by the Participant on such last day and the Company shall make the appropriate payment therefor.

(e) *Payment*. Upon the exercise of a SAR, the Company shall pay to the Participant an amount equal to the number of Common Shares subject to the SAR that are being exercised multiplied by the excess, if any, of the Fair Market Value of one Common Share on the exercise date over the Strike Price, less an amount equal to any federal, state, local and non-U.S. income and employment taxes required to be withheld. The Company shall pay such amount in cash, in Common Shares valued at Fair Market Value, or any combination thereof, as determined by the Committee. Any fractional Common Share shall be settled in cash.

9. *Restricted Stock and Restricted Stock Units*.

(a) *Generally*. Each grant of Restricted Stock and Restricted Stock Units shall be evidenced by an Award Agreement (whether in paper or electronic medium (including email or the posting on a web site maintained by the Company or a third party under contract with the Company)). Each such grant shall be subject to the conditions set forth in this Section 9, and to such other conditions not inconsistent with this Plan as may be reflected in the applicable Award Agreement. Restricted Stock and Restricted Stock Units shall be subject to such restrictions on transferability and other restrictions as the Committee may impose (including, for example, limitations on the right to vote Restricted Stock or the right to receive dividends on the Restricted Stock). These restrictions may lapse separately or in combination at such times, under such circumstances, in such installments, upon the satisfaction of Performance Goals or otherwise, as the Committee determines at the time of the grant of an Award or thereafter. Except as otherwise provided in an Award Agreement, a Participant shall have none of the rights of a stockholder with respect to Restricted Stock Units until such time as Common Shares are paid in settlement of such Awards.

(b) *Restricted Accounts; Escrow or Similar Arrangement*. Unless otherwise determined by the Committee, upon the grant of Restricted Stock, a book entry in a restricted account shall be established in the Participant's name at the Company's transfer agent and, if the Committee determines that the Restricted Stock shall be held by the Company or in escrow rather than held in such restricted account pending the release of the applicable restrictions, the Committee may require the Participant to additionally execute and deliver to the Company (i) an escrow agreement satisfactory to the Committee, if applicable, and (ii) the appropriate share power (endorsed in blank) with respect to the Restricted Stock covered by such agreement. If a Participant shall fail to execute

an agreement evidencing an Award of Restricted Stock and, if applicable, an escrow agreement and blank share power within the amount of time specified by the Committee, the Award shall be null and void *ab initio*. Subject to the restrictions set forth in this Section 9 and the applicable Award Agreement, the Participant generally shall have the rights and privileges of a stockholder as to such Restricted Stock, including without limitation the right to vote such Restricted Stock and the right to receive dividends, if applicable. To the extent shares of Restricted Stock are forfeited, any share certificates issued to the Participant evidencing such shares shall be returned to the Company, and all rights of the Participant to such shares and as a stockholder with respect thereto shall terminate without further obligation on the part of the Company.

(c) *Vesting; Acceleration of Lapse of Restrictions*. Unless otherwise provided by the Committee in an Award Agreement: (i) the Restricted Period shall lapse with respect to 100% of the Restricted Stock and Restricted Stock Units on the first anniversary of the Date of Grant; and (ii) the unvested portion of Restricted Stock and Restricted Stock Units shall terminate and be forfeited upon the termination of employment or service of the Participant granted the applicable Award.

(d) *Delivery of Restricted Stock and Settlement of Restricted Stock Units*.

(i) Upon the expiration of the Restricted Period with respect to any shares of Restricted Stock, the restrictions set forth in the applicable Award Agreement shall be of no further force or effect with respect to such shares, except as set forth in the applicable Award Agreement. If an escrow arrangement is used, upon such expiration, the Company shall deliver to the Participant, or his beneficiary, without charge, the share certificate evidencing the shares of Restricted Stock that have not then been forfeited and with respect to which the Restricted Period has expired (rounded down to the nearest full share). Dividends, if any, that may have been withheld by the Committee and attributable to any particular share of Restricted Stock shall be distributed to the Participant in cash or, at the sole discretion of the Committee, in shares of Common Stock having a Fair Market Value equal to the amount of such dividends, upon the release of restrictions on such shares of Restricted Stock and, if such shares of Restricted Stock are forfeited, the Participant shall have no right to such dividends (except as otherwise set forth by the Committee in the applicable Award Agreement).

(ii) Unless otherwise provided by the Committee in an Award Agreement, upon the expiration of the Restricted Period with respect to any outstanding Restricted Stock Units, the Company shall deliver to the Participant, or his beneficiary, without charge, one Common Share for each such outstanding Restricted Stock Unit; *provided, however*, that the Committee may, in its sole discretion and subject to the requirements of Section 409A of the Code, elect to (i) pay cash or part cash and part Common Share in lieu of delivering only Common Shares in respect of such Restricted Stock Units or (ii) defer the delivery of Common Shares (or cash or part Common Shares and part cash, as the case may be) beyond the expiration of the Restricted Period if such delivery would result in a violation of applicable law until such time as is no longer the case. If a cash payment is made in lieu of delivering Common Shares, the amount of such payment shall be equal to the Fair Market Value of the Common Shares as of the date on which the Restricted Period lapsed with respect to such Restricted Stock Units, less an amount equal to any federal, state, local and non-U.S. income and employment taxes required to be withheld.

10. *Stock Bonus Awards*. The Committee may issue unrestricted Common Shares, or other Awards denominated in Common Shares, under this Plan to Eligible Persons, either alone or in tandem with other awards, in such amounts as the Committee shall from time to time in its sole discretion determine. Each Stock Bonus Award granted under this Plan shall be evidenced by an Award Agreement (whether in paper or electronic medium (including email or the posting on a web site maintained by the Company or a third party under contract with the Company)). Each Stock Bonus Award so granted shall be subject to such conditions not inconsistent with this Plan as may be reflected in the applicable Award Agreement.

11. *Performance Compensation Awards*.

(a) *Generally*. The provisions of the Plan are intended to enable Options and Stock Appreciation Rights granted hereunder to certain Eligible Persons to qualify for an exemption under Section 162(m) of the Code. The Committee shall have the authority, at the time of grant of any Award described in Sections 7 through 10 of this Plan, to designate such Award as a Performance Compensation Award intended to qualify as "performance-based compensation" under Section 162(m) of the Code. The Committee shall have the authority to make an award of a cash bonus to any Participant and designate such Award as a Performance Compensation Award intended to qualify as "performance-based compensation" under Section 162(m) of the Code.

(b) *Discretion of Committee with Respect to Performance Compensation Awards*. With regard to a particular Performance Period, the Committee shall have sole discretion to select the length of such Performance Period, the type(s) of Performance Compensation Awards to be issued, the Performance Criteria that will be used to establish the Performance Goal(s), the kind(s) and/or level(s) of the Performance Goals(s) that is (are) to apply and the Performance Formula. Within the first 90 calendar days of a Performance Period (or, if longer or shorter, within the maximum period allowed under Section 162(m) of the Code, if applicable), the Committee shall, with regard to the Performance Compensation Awards to be issued for such Performance Period, exercise its discretion with respect to each of the matters enumerated in the immediately preceding sentence and record the same in writing.

(c) *Performance Criteria*. The Performance Criteria that will be used to establish the Performance Goal(s) shall be based on the attainment of specific levels of performance of the Company and/or one or more Affiliates, divisions or operational units, or any combination of the foregoing, as determined by the Committee, which criteria may be based on one or more of the following business criteria: (i) revenue; (ii) sales; (iii) profit (net profit, gross profit, operating profit, economic profit, profit margins or other corporate profit measures); (iv) earnings (EBIT, EBITDA, earnings per share, or other corporate earnings measures); (v) net income (before or after taxes, operating income or other income measures); (vi) cash (cash flow, cash generation or other cash measures); (vii) stock price or performance; (viii) total stockholder return (stock price appreciation plus reinvested dividends divided by beginning share price); (ix) economic value added; (x) return measures (including, but not limited to, return on assets, capital, equity, investments or sales, and cash flow return on assets, capital, equity, or sales); (xi) market share; (xii) improvements in capital structure; (xiii) expenses (expense management, expense ratio, expense efficiency ratios or other expense measures); (xiv) business expansion or consolidation (acquisitions and divestitures); (xv)

internal rate of return or increase in net present value; (xvi) working capital targets relating to inventory and/or accounts receivable; (xvii) inventory management; (xviii) service or product delivery or quality; (xix) customer satisfaction; (xx) employee retention; (xxi) safety standards; (xxii) productivity measures; (xxiii) cost reduction measures; and/or (xxiv) strategic plan development and implementation. Any one or more of the Performance Criteria adopted by the Committee may be used on an absolute or relative basis to measure the performance of the Company and/or one or more Affiliates as a whole or any business unit(s) of the Company and/or one or more Affiliates or any combination thereof, as the Committee may deem appropriate, or any of the above Performance Criteria may be compared to the performance of a selected group of comparison companies, or a published or special index that the Committee, in its sole discretion, deems appropriate, or as compared to various stock market indices. The Committee also has the authority to provide for accelerated vesting of any Award based on the achievement of Performance Goals pursuant to the Performance Criteria specified in this paragraph. To the extent required under Section 162(m) of the Code, the Committee shall, within the first 90 calendar days of a Performance Period (or, if longer or shorter, within the maximum period allowed under Section 162(m) of the Code), define in an objective fashion the manner of calculating the Performance Criteria it selects to use for such Performance Period and thereafter promptly communicate such Performance Criteria to the Participant.

(d) *Modification of Performance Goal(s)*. In the event that applicable tax and/or securities laws change to permit Committee discretion to alter the governing Performance Criteria without obtaining stockholder approval of such alterations, the Committee shall have sole discretion to make such alterations without obtaining stockholder approval. The Committee is authorized at any time during the first 90 calendar days of a Performance Period (or, if longer or shorter, within the maximum period allowed under Section 162(m) of the Code, if applicable), or at any time thereafter to the extent the exercise of such authority at such time would not cause the Performance Compensation Awards granted to any Participant for such Performance Period to fail to qualify as "performance-based compensation" under Section 162(m) of the Code, in its sole discretion, to adjust or modify the calculation of a Performance Goal for such Performance Period, based on and in order to appropriately reflect the following events: (i) asset write-downs; (ii) litigation or claim judgments or settlements; (iii) the effect of changes in tax laws, accounting principles, or other laws or regulatory rules affecting reported results; (iv) any reorganization and restructuring programs; (v) extraordinary nonrecurring items as described in Accounting Principles Board Opinion No. 30 (or any successor pronouncement thereto) and/or in management's discussion and analysis of financial condition and results of operations appearing in the Company's annual report to stockholders for the applicable year; (vi) acquisitions or divestitures; (vii) any other specific unusual or nonrecurring events, or objectively determinable category thereof; (viii) foreign exchange gains and losses; and (ix) a change in the Company's fiscal year.

(e) *Payment of Performance Compensation Awards*.

(f)

(i) *Condition to Receipt of Payment*. Unless otherwise provided in the applicable Award Agreement, a Participant must be employed by, or in service to, the Company on the last day of a Performance Period to be eligible for payment in respect of a Performance Compensation Award for such Performance Period.

(ii) *Limitation*. A Participant shall be eligible to receive payment in respect of a Performance Compensation Award only to the extent that: (A) the Performance Goals for such period are achieved; and (B) all or some of the portion of such Participant's Performance Compensation Award has been earned for the Performance Period based on the application of the Performance Formula to such achieved Performance Goals.

(iii) *Certification*. Following the completion of a Performance Period, the Committee shall review and certify in writing whether, and to what extent, the Performance Goals for the Performance Period have been achieved and, if so, calculate and certify in writing that amount of the Performance Compensation Awards earned for the period based upon the Performance Formula. The Committee shall then determine the amount of each Participant's Performance Compensation Award actually payable for the Performance Period and, in so doing, may apply Negative Discretion.

(iv) *Use of Negative Discretion*. In determining the actual amount of an individual Participant's Performance Compensation Award for a Performance Period, the Committee may reduce or eliminate the amount of the Performance Compensation Award earned under the Performance Formula in the Performance Period through the use of Negative Discretion if, in its sole judgment, such reduction or elimination is appropriate. The Committee shall not have the discretion, except as is otherwise provided in this Plan, to (A) grant or provide payment in respect of Performance Compensation Awards for a Performance Period if the Performance Goals for such Performance Period have not been attained; or (B) increase a Performance Compensation Award above the applicable limitations set forth in Section 5 of this Plan.

(f) *Timing of Award Payments*. Performance Compensation Awards granted for a Performance Period shall be paid to Participants as soon as administratively practicable following completion of the certifications required by this Section 11, but in no event later than two-and-one-half months following the end of the fiscal year during which the Performance Period is completed in order to comply with the short-term deferral rules under Section 1.409A-1(b)(4) of the Treasury Regulations. Notwithstanding the foregoing, payment of a Performance Compensation Award may be delayed, as permitted by Section 1.409A-2(b)(7)(i) of the Treasury Regulations, to the extent that the Company reasonably anticipates that if such payment were made as scheduled, the Company's tax deduction with respect to such payment would not be permitted due to the application of Section 162(m) of the Code.

12. *Changes in Capital Structure and Similar Events*. In the event of (a) any dividend or other distribution (whether in the form of cash, Common Shares, other securities or other property), recapitalization, stock split, reverse stock split, reorganization, merger, amalgamation, consolidation, split-up, split-off, combination, repurchase or exchange of Common Shares or other securities of the Company, issuance of warrants or other rights to acquire Common Shares or other securities of the Company, or other similar corporate transaction or event (including, without limitation, a Change in Control) that affects the Common Shares, or (b) unusual or nonrecurring events (including, without limitation, a Change in Control) affecting the Company, any Affiliate, or the financial statements of the Company or any Affiliate, or changes in applicable rules, rulings, regulations or other requirements of any governmental body or securities exchange or inter-dealer

quotation system, accounting principles or law, such that in either case an adjustment is determined by the Committee in its sole discretion to be necessary or appropriate in order to prevent dilution or enlargement of rights, then the Committee shall make any such adjustments that are equitable, including without limitation any or all of the following:

(i) adjusting any or all of (A) the number of Common Shares or other securities of the Company (or number and kind of other securities or other property) that may be delivered in respect of Awards or with respect to which Awards may be granted under this Plan (including, without limitation, adjusting any or all of the limitations under Section 5 of this Plan) and (B) the terms of any outstanding Award, including, without limitation, (1) the number of Common Shares or other securities of the Company (or number and kind of other securities or other property) subject to outstanding Awards or to which outstanding Awards relate, (2) the Exercise Price or Strike Price with respect to any Award or (3) any applicable performance measures (including, without limitation, Performance Criteria and Performance Goals);

(ii) subject to the requirements of Section 409A of the Code, providing for a substitution or assumption of Awards, accelerating the exercisability of, lapse of restrictions on, or termination of, Awards or providing for a period of time for exercise prior to the occurrence of such event; and

(iii) subject to the requirements of Section 409A of the Code, canceling any one or more outstanding Awards and causing to be paid to the holders thereof, in cash, Common Shares, other securities or other property, or any combination thereof, the value of such Awards, if any, as determined by the Committee (which if applicable may be based upon the price per Common Share received or to be received by other stockholders of the Company in such event), including without limitation, in the case of an outstanding Option or SAR, a cash payment in an amount equal to the excess, if any, of the Fair Market Value (as of a date specified by the Committee) of the Common Shares subject to such Option or SAR over the aggregate Exercise Price or Strike Price of such Option or SAR, respectively (it being understood that, in such event, any Option or SAR having a per share Exercise Price or Strike Price equal to, or in excess of, the Fair Market Value of a Common Share subject thereto may be canceled and terminated without any payment or consideration therefor); *provided, however*, that in the case of any "equity restructuring" (within the meaning of the Financial Accounting Standards Board Statement of Financial Accounting Standards No. 123 (revised 2004) or ASC Topic 718, or any successor thereto), the Committee shall make an equitable or proportionate adjustment to outstanding Awards to reflect such equity restructuring. Any adjustment in Incentive Stock Options under this Section 12 (other than any cancellation of Incentive Stock Options) shall be made only to the extent not constituting a "modification" within the meaning of Section 424(h)(3) of the Code, and any adjustments under this Section 12 shall be made in a manner that does not adversely affect the exemption provided pursuant to Rule 16b-3 under the Exchange Act. The Company shall give each Participant notice of an adjustment hereunder and, upon notice, such adjustment shall be conclusive and binding for all purposes.

13. *Effect of Change in Control.* Except to the extent otherwise provided in an Award Agreement, in the event of a Change in Control, notwithstanding any provision of this Plan to the contrary, with respect to all or any portion of a particular outstanding Award or Awards:

(a) all of the then outstanding Options and SARs shall immediately vest and become immediately exercisable as of a time prior to the Change in Control;

(b) the Restricted Period shall expire as of a time prior to the Change in Control (including without limitation a waiver of any applicable Performance Goals);

(c) Performance Periods in effect on the date the Change in Control occurs shall end on such date, and the Committee shall (i) determine the extent to which Performance Goals with respect to each such Performance Period have been met based upon such audited or unaudited financial information or other information then available as it deems relevant and (ii) cause the Participant to receive partial or full payment of Awards for each such Performance Period based upon the Committee's determination of the degree of attainment of the Performance Goals, or assuming that the applicable "target" levels of performance have been attained or on such other basis determined by the Committee.

To the extent practicable, any actions taken by the Committee under the immediately preceding clauses (a) through (c) shall occur in a manner and at a time which allows affected Participants the ability to participate in the Change in Control transactions with respect to the Common Shares subject to their Awards.

14. *Amendments and Termination*.

(a) *Amendment and Termination of this Plan*. The Board may amend, alter, suspend, discontinue, or terminate this Plan or any portion thereof at any time; provided, that (i) no amendment to the definition of Eligible Person in Section 2(q), Section 5(b), Section 11(c) or Section 14(b) (to the extent required by the proviso in such Section 14(b)) shall be made without stockholder approval and (ii) no such amendment, alteration, suspension, discontinuation or termination shall be made without stockholder approval if such approval is necessary to comply with any tax or regulatory requirement applicable to this Plan (including, without limitation, as necessary to comply with any rules or requirements of any national securities exchange or inter-dealer quotation system on which the Common Shares may be listed or quoted or to prevent the Company from being denied a tax deduction under Section 162(m) of the Code); *and, provided, further*, that any such amendment, alteration, suspension, discontinuance or termination that would materially and adversely affect the rights of any Participant or any holder or beneficiary of any Award theretofore granted shall not to that extent be effective without the prior written consent of the affected Participant, holder or beneficiary.

(b) *Amendment of Award Agreements*. The Committee may, to the extent consistent with the terms of any applicable Award Agreement, waive any conditions or rights under, amend any terms of, or alter, suspend, discontinue, cancel or terminate, any Award theretofore granted or the associated Award Agreement, prospectively or retroactively; *provided, however* that any such waiver, amendment, alteration, suspension, discontinuance, cancellation or termination that would materially and adversely affect the rights of any Participant with respect to any Award theretofore granted shall not to that extent be effective without the consent of the affected Participant.

15. *General.*

(a) *Award Agreements*. Each Award under this Plan shall be evidenced by an Award Agreement, which shall be delivered to the Participant (whether in paper or electronic medium (including email or the posting on a web site maintained by the Company or a third party under contract with the Company)) and shall specify the terms and conditions of the Award and any rules applicable thereto, including without limitation, the effect on such Award of the death, Disability or termination of employment or service of a Participant, or of such other events as may be determined by the Committee. The Company's failure to specify any term of any Award in any particular Award Agreement shall not invalidate such term, provided such terms was duly adopted by the Board or the Committee.

(b) *Nontransferability; Trading Restrictions*.

(i) Each Award shall be exercisable only by a Participant during the Participant's lifetime, or, if permissible under applicable law, by the Participant's legal guardian or representative. No Award may be assigned, alienated, pledged, attached, sold or otherwise transferred or encumbered by a Participant other than by will or by the laws of descent and distribution and any such purported assignment, alienation, pledge, attachment, sale, transfer or encumbrance shall be void and unenforceable against the Company or an Affiliate; provided that the designation of a beneficiary shall not constitute an assignment, alienation, pledge, attachment, sale, transfer or encumbrance.

(ii) Notwithstanding the foregoing, the Committee may, in its sole discretion, permit Awards (other than Incentive Stock Options) to be transferred by a Participant, with or without consideration, subject to such rules as the Committee may adopt consistent with any applicable Award Agreement to preserve the purposes of this Plan, to: (A) any person who is a "family member" of the Participant, as such term is used in the instructions to Form S-8 under the Securities Act (collectively, the "*Immediate Family Members*"); (B) a trust solely for the benefit of the Participant and his or her Immediate Family Members; or (C) a partnership or limited liability company whose only partners or stockholders are the Participant and his or her Immediate Family Members; or (D) any other transferee as may be approved either (I) by the Board or the Committee in its sole discretion, or (II) as provided in the applicable Award Agreement (each transferee described in clauses (A), (B), (C) and (D) above is hereinafter referred to as a "*Permitted Transferee*"); provided, that the Participant gives the Committee advance written notice describing the terms and conditions of the proposed transfer and the Committee notifies the Participant in writing that such a transfer would comply with the requirements of this Plan.

(iii) The terms of any Award transferred in accordance with subparagraph (ii) above shall apply to the Permitted Transferee and any reference in this Plan, or in any applicable Award Agreement, to a Participant shall be deemed to refer to the Permitted Transferee, except that (A) Permitted Transferees shall not be entitled to transfer any Award, other than by will or the laws of descent and distribution; (B) Permitted Transferees shall not be entitled to exercise any transferred Option unless there shall be in effect a registration statement on an appropriate form covering the Common Shares to be acquired pursuant to the exercise of such Option if the Committee determines,

consistent with any applicable Award Agreement, that such a registration statement is necessary or appropriate; (C) the Committee or the Company shall not be required to provide any notice to a Permitted Transferee, whether or not such notice is or would otherwise have been required to be given to the Participant under this Plan or otherwise; and (D) the consequences of the termination of the Participant's employment by, or services to, the Company or an Affiliate under the terms of this Plan and the applicable Award Agreement shall continue to be applied with respect to the Participant, including, without limitation, that an Option shall be exercisable by the Permitted Transferee only to the extent, and for the periods, specified in this Plan and the applicable Award Agreement.

(iv) The Committee shall have the right, either on an Award-by-Award basis or as a matter of policy for all Awards or one or more classes of Awards, to condition the delivery of vested Common Shares received in connection with such Award on the Participant's agreement to such restrictions as the Committee may determine.

(c) *Tax Withholding*.

(i) A Participant shall be required to pay to the Company or any Affiliate, or the Company or any Affiliate shall have the right and is hereby authorized to withhold, from any cash, Common Shares, other securities or other property deliverable under any Award or from any compensation or other amounts owing to a Participant, the amount (in cash, Common Shares, other securities or other property) of any required withholding taxes in respect of an Award, its exercise, or any payment or transfer under an Award or under this Plan and to take such other action as may be necessary in the opinion of the Committee or the Company to satisfy all obligations for the payment of such withholding and taxes. In addition, the Committee, in its discretion, may make arrangements mutually agreeable with a Participant who is not an employee of the Company or an Affiliate to facilitate the payment of applicable income and self-employment taxes.

(ii) Without limiting the generality of clause (i) above, the Committee may, in its sole discretion, permit a Participant to satisfy, in whole or in part, the foregoing withholding liability by (A) the delivery of Common Shares (which are not subject to any pledge or other security interest) owned by the Participant having a fair market value equal to such withholding liability or (B) having the Company withhold from the number of Common Shares otherwise issuable or deliverable pursuant to the exercise or settlement of the Award a number of shares with a fair market value equal to such withholding liability (but no more than the maximum individual statutory rate for the applicable tax jurisdiction).

(d) *No Claim to Awards; No Rights to Continued Employment; Waiver* . No employee of the Company or an Affiliate, or other person, shall have any claim or right to be granted an Award under this Plan or, having been selected for the grant of an Award, to be selected for a grant of any other Award. There is no obligation for uniformity of treatment of Participants or holders or beneficiaries of Awards. The terms and conditions of Awards and the Committee's determinations and interpretations with respect thereto need not be the same with respect to each Participant and may be made selectively among Participants, whether or not such Participants are similarly situated. Neither this Plan nor any action taken hereunder shall be construed as giving any Participant any right to be retained in the employ or service of the Company or an Affiliate, nor shall it be construed

as giving any Participant any rights to continued service on the Board. The Company or any of its Affiliates may at any time dismiss a Participant from employment or discontinue any consulting relationship, free from any liability or any claim under this Plan, unless otherwise expressly provided in this Plan or any Award Agreement. By accepting an Award under this Plan, a Participant shall thereby be deemed to have waived any claim to continued exercise or vesting of an Award or to damages or severance entitlement related to non-continuation of the Award beyond the period provided under this Plan or any Award Agreement, notwithstanding any provision to the contrary in any written employment contract or other agreement between the Company and its Affiliates and the Participant, whether any such agreement is executed before, on or after the Date of Grant.

(e) *International Participants*. With respect to Participants who reside or work outside of the United States of America and who are not (and who are not expected to be) "covered employees" within the meaning of Section 162(m) of the Code, the Committee may in its sole discretion amend the terms of this Plan or outstanding Awards (or establish a sub-plan) with respect to such Participants in order to conform such terms with the requirements of local law or to obtain more favorable tax or other treatment for such Participants, the Company or its Affiliates.

(f) *Designation and Change of Beneficiary*. Each Participant may file with the Committee a written designation of one or more persons as the beneficiary(ies) who shall be entitled to receive the amounts payable with respect to an Award, if any, due under this Plan upon his or her death. A Participant may, from time to time, revoke or change his or her beneficiary designation without the consent of any prior beneficiary by filing a new designation with the Committee. The last such designation filed with the Committee shall be controlling; *provided, however*, that no designation, or change or revocation thereof, shall be effective unless received by the Committee prior to the Participant's death, and in no event shall it be effective as of a date prior to such receipt. If no beneficiary designation is filed by a Participant, the beneficiary shall be deemed to be his or her spouse or, if the Participant is unmarried at the time of death, his or her estate. Upon the occurrence of a Participant's divorce (as evidenced by a final order or decree of divorce), any spousal designation previously given by such Participant shall automatically terminate.

(g) *Termination of Employment/Service*. Unless determined otherwise by the Committee at any point following such event: (i) neither a temporary absence from employment or service due to illness, vacation or leave of absence nor a transfer from employment or service with the Company to employment or service with an Affiliate (or vice-versa) shall be considered a termination of employment or service with the Company or an Affiliate; and (ii) if a Participant's employment with the Company and its Affiliates terminates, but such Participant continues to provide services to the Company and its Affiliates in a non-employee capacity (or vice-versa), such change in status shall not be considered a termination of employment with the Company or an Affiliate for purposes of this Plan unless the Committee, in its discretion, determines otherwise.

(h) *No Rights as a Stockholder*. Except as otherwise specifically provided in this Plan or any Award Agreement, no person shall be entitled to the privileges of ownership in respect of Common Shares that are subject to Awards hereunder until such shares have been issued or delivered to that person.

(i) *Government and Other Regulations*.

(i) The obligation of the Company to settle Awards in Common Shares or other consideration shall be subject to all applicable laws, rules, and regulations, and to such approvals by governmental agencies as may be required. Notwithstanding any terms or conditions of any Award to the contrary, the Company shall be under no obligation to offer to sell or to sell, and shall be prohibited from offering to sell or selling, any Common Shares pursuant to an Award unless such shares have been properly registered for sale pursuant to the Securities Act with the Securities and Exchange Commission or unless the Company has received an opinion of counsel, satisfactory to the Company, that such shares may be offered or sold without such registration pursuant to an available exemption therefrom and the terms and conditions of such exemption have been fully complied with. The Company shall be under no obligation to register for sale under the Securities Act any of the Common Shares to be offered or sold under this Plan. The Committee shall have the authority to provide that all certificates for Common Shares or other securities of the Company or any Affiliate delivered under this Plan shall be subject to such stop transfer orders and other restrictions as the Committee may deem advisable under this Plan, the applicable Award Agreement, the federal securities laws, or the rules, regulations and other requirements of the Securities and Exchange Commission, any securities exchange or inter-dealer quotation system upon which such shares or other securities are then listed or quoted and any other applicable federal, state, local or non-U.S. laws, and, without limiting the generality of Section 9 of this Plan, the Committee may cause a legend or legends to be put on any such certificates to make appropriate reference to such restrictions. Notwithstanding any provision in this Plan to the contrary, the Committee reserves the right to add any additional terms or provisions to any Award granted under this Plan that it in its sole discretion deems necessary or advisable in order that such Award complies with the legal requirements of any governmental entity to whose jurisdiction the Award is subject.

(ii) The Committee may cancel an Award or any portion thereof if it determines, in its sole discretion, that legal or contractual restrictions and/or blockage and/or other market considerations would make the Company's acquisition of Common Shares from the public markets, the Company's issuance of Common Shares to the Participant, the Participant's acquisition of Common Shares from the Company and/or the Participant's sale of Common Shares to the public markets, illegal, impracticable or inadvisable. If the Committee determines to cancel all or any portion of an Award in accordance with the foregoing, unless doing so would violate Section 409A of the Code, the Company shall pay to the Participant an amount equal to the excess of (A) the aggregate Fair Market Value of the Common Shares subject to such Award or portion thereof canceled (determined as of the applicable exercise date, or the date that the shares would have been vested or delivered, as applicable), over (B) the aggregate Exercise Price or Strike Price (in the case of an Option or SAR, respectively) or any amount payable as a condition of delivery of Common Shares (in the case of any other Award). Such amount shall be delivered to the Participant as soon as practicable following the cancellation of such Award or portion thereof. The Committee shall have the discretion to consider and take action to mitigate the tax consequence to the Participant in cancelling an Award in accordance with this clause.

(j) *Payments to Persons Other Than Participants*. If the Committee shall find that any person to whom any amount is payable under this Plan is unable to care for his affairs because

of illness or accident, or is a minor, or has died, then any payment due to such person or his estate (unless a prior claim therefor has been made by a duly appointed legal representative) may, if the Committee so directs the Company, be paid to his spouse, child, relative, an institution maintaining or having custody of such person, or any other person deemed by the Committee to be a proper recipient on behalf of such person otherwise entitled to payment. Any such payment shall be a complete discharge of the liability of the Committee and the Company therefor.

(k) *Nonexclusivity of this Plan*. Neither the adoption of this Plan by the Board nor the submission of this Plan to the stockholders of the Company for approval shall be construed as creating any limitations on the power of the Board to adopt such other incentive arrangements as it may deem desirable, including, without limitation, the granting of stock options or other equity-based awards otherwise than under this Plan, and such arrangements may be either applicable generally or only in specific cases.

(l) *No Trust or Fund Created*. Neither this Plan nor any Award shall create or be construed to create a trust or separate fund of any kind or a fiduciary relationship between the Company or any Affiliate, on the one hand, and a Participant or other person or entity, on the other hand. No provision of this Plan or any Award shall require the Company, for the purpose of satisfying any obligations under this Plan, to purchase assets or place any assets in a trust or other entity to which contributions are made or otherwise to segregate any assets, nor shall the Company maintain separate bank accounts, books, records or other evidence of the existence of a segregated or separately maintained or administered fund for such purposes. Participants shall have no rights under this Plan other than as general unsecured creditors of the Company, except that insofar as they may have become entitled to payment of additional compensation by performance of services, they shall have the same rights as other employees under general law.

(m) *Reliance on Reports*. Each member of the Committee and each member of the Board shall be fully justified in acting or failing to act, as the case may be, and shall not be liable for having so acted or failed to act in good faith, in reliance upon any report made by the independent public accountant of the Company and/or its Affiliates and/or any other information furnished in connection with this Plan by any agent of the Company or the Committee or the Board, other than himself.

(n) *Relationship to Other Benefits*. No payment under this Plan shall be taken into account in determining any benefits under any pension, retirement, profit sharing, group insurance or other benefit plan of the Company except as otherwise specifically provided in such other plan.

(o) *Governing Law*. The Plan shall be governed by and construed in accordance with the internal laws of the State of Delaware, without giving effect to the conflict of laws provisions.

(p) *Severability*. If any provision of this Plan or any Award or Award Agreement is or becomes or is deemed to be invalid, illegal, or unenforceable in any jurisdiction or as to any person or entity or Award, or would disqualify this Plan or any Award under any law deemed applicable by the Committee, such provision shall be construed or deemed amended to conform to the applicable laws in the manner that most closely reflects the original intent of the Award or the

Plan, or if it cannot be construed or deemed amended without, in the determination of the Committee, materially altering the intent of this Plan or the Award, such provision shall be construed or deemed stricken as to such jurisdiction, person or entity or Award and the remainder of this Plan and any such Award shall remain in full force and effect.

(q) *Obligations Binding on Successors*. The obligations of the Company under this Plan shall be binding upon any successor corporation or organization resulting from the merger, amalgamation, consolidation or other reorganization of the Company, or upon any successor corporation or organization succeeding to substantially all of the assets and business of the Company.

(r) *Code Section 162(m) Approval*. If so determined by the Committee, the provisions of this Plan regarding Performance Compensation Awards shall be disclosed and reapproved by stockholders no later than the first stockholder meeting that occurs in the fifth year following the year in which stockholders previously approved such provisions, in each case in order for certain Awards granted after such time to be exempt from the deduction limitations of Section 162(m) of the Code. Nothing in this clause, however, shall affect the validity of Awards granted after such time if such stockholder approval has not been obtained.

(s) *Expenses; Gender; Titles and Headings*. The expenses of administering this Plan shall be borne by the Company and its Affiliates. Masculine pronouns and other words of masculine gender shall refer to both men and women. The titles and headings of the sections in this Plan are for convenience of reference only, and in the event of any conflict, the text of this Plan, rather than such titles or headings shall control.

(t) *Other Agreements*. Notwithstanding the above, the Committee may require, as a condition to the grant of and/or the receipt of Common Shares under an Award, that the Participant execute lock-up, stockholder or other agreements, as it may determine in its sole and absolute discretion.

(u) *Section 409A*. The Plan and all Awards granted hereunder are intended to comply with, or otherwise be exempt from, the requirements of Section 409A of the Code. The Plan and all Awards granted under this Plan shall be administered, interpreted, and construed in a manner consistent with Section 409A of the Code to the extent necessary to avoid the imposition of additional taxes under Section 409A(a)(1)(B) of the Code. Notwithstanding anything in this Plan to the contrary, in no event shall the Committee exercise its discretion to accelerate the payment or settlement of an Award where such payment or settlement constitutes deferred compensation within the meaning of Section 409A of the Code unless, and solely to the extent that, such accelerated payment or settlement is permissible under Section 1.409A-3(j)(4) of the Treasury Regulations. If a Participant is a "specified employee" (within the meaning of Section 1.409A-1(i) of the Treasury Regulations) at any time during the twelve (12)-month period ending on the date of his termination of employment, and any Award hereunder subject to the requirements of Section 409A of the Code is to be satisfied on account of the Participant's termination of employment, satisfaction of such Award shall be suspended until the date that is six (6) months after the date of such termination of employment.

(v) *Payments*. Participants shall be required to pay, to the extent required by applicable law, any amounts required to receive Common Shares under any Award made under this Plan.

Addendum to Empire Resorts, Inc. 2015 Equity Incentive Plan

Pursuant to Section 12 of the Plan, on January 20, 2016, the Board of Directors of the Company determined that the one-for-five reverse stock split effected by the Company on December 21, 2016 should be applied to reduce the amount of shares reserved for award under the Plan pursuant to Section 5(b). Accordingly, the number of shares reserved for grant under the Plan was reduced to 952,498.

Pursuant to Section 5(b) of the Plan, on March 8, 2016, the Board of Directors of the Company determined that, effective as of March 20, 2016, which is the 90th day following the Company's grant of a gaming facility license with respect to the Montreign Resort Casino, the total number of shares reserved for award under the Plan be increased to an aggregate of 2,585,707.

EXHIBIT 10.43

EXECUTION VERSION

$485,000,000

BUILDING TERM LOAN AGREEMENT

(to be filed pursuant to the Lien Law of the State of New York)

among

MONTREIGN OPERATING COMPANY, LLC,
as Borrower

and

THE LENDERS PARTY HERETO,
as Lenders

and

CREDIT SUISSE AG, CAYMAN ISLANDS BRANCH,
as Administrative Agent

dated as of January 24, 2017

****

CREDIT SUISSE SECURITIES (USA) LLC,
as Joint Lead Arranger and Joint Book Runner

FIFTH THIRD BANK,
as Joint Lead Arranger and Joint Book Runner

NOMURA SECURITIES INTERNATIONAL, INC.,
as Joint Book Runner

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Appendices, Exhibits and Schedules

This BUILDING TERM LOAN AGREEMENT, dated as of January 24, 2017 (this "Agreement"), is entered into among MONTREIGN OPERATING COMPANY, LLC a New York limited liability company (the " Borrower"), the banks, financial institutions and other entities from time to time party to this Agreement as lenders (each, individually, a "Lender" and collectively, the "Lenders"), and CREDIT SUISSE AG, CAYMAN ISLANDS BRANCH, as administrative agent (in such capacity, together with its successors and assigns in such capacity, the "Administrative Agent").

RECITALS

The Borrower, together with the other Loan Parties, owns or intends to develop, construct, own and operate a casino and hotel resort, entertainment village and golf course, including restaurants and related facilities and amenities (including all buildings, structures and improvements related thereto, all fixtures, attachments, appliances, equipment, machinery and other articles attached thereto or used in connection therewith and all alterations thereto or replacements thereof, the "Project") to be located in Sullivan County, New York, more particularly described on Appendix A attached hereto. Capitalized terms used but not otherwise defined in these Recitals shall have the meanings given thereto in Section 1.01.

The Borrower has requested and applied to the Administrative Agent and the Lenders for loans of up to $485,000,000 to finance, among other things, certain "costs of improvements" (as defined in the Lien Law of the State of New York) associated with the construction, development and renovation of the Project, which loans are to be made pursuant to this Agreement.

AGREEMENT

In consideration of the agreements set forth herein and in the other Loan Documents and in reliance upon the representations and warranties set forth herein and therein, the parties hereto hereby agree as follows:

Article I.

DEFINITIONS

Section 1.01. Defined Terms. As used in this Agreement, the following terms shall have the meanings specified below:

"ABR", when used in reference to any Loan, refers to whether such Loan is bearing interest at a rate determined by reference to the Alternate Base Rate.

"Additional Capital Expenditures Amount" shall have the meaning given in Section 6.08(c).

"Adelaar Developer" shall mean Adelaar Developer, LLC, a Delaware limited liability company.

"Adjusted LIBO Rate" shall mean, with respect to any LIBOR Loan (or any determination made under clause (c) of the definition of Alternate Base Rate) for any Interest Period, an interest rate per annum equal to the product of (i) the LIBO Rate in effect for such Interest Period and (ii) Statutory Reserves; provided that the Adjusted LIBO Rate shall not be less than (x) in the case of Term A Loans, 0.00% and (y) in the case of Term B Loans, 1.00%.

"Administrative Agent" shall have the meaning given in the preamble to this Agreement.

"Administrative Questionnaire" shall mean an Administrative Questionnaire substantially in the form of Exhibit O or such other form as shall be approved by the Administrative Agent.

"Affected Lender" shall have the meaning given in Section 2.17(b).

"Affected Loans" shall have the meaning given in Section 2.17(b).

"Affiliate" shall mean, when used with respect to a specified Person, another Person that directly, or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with the Person specified; provided, however, that, other than when used with respect to a Lender, an Approved Fund, an Agent or a Lead Arranger (including any Eligible Assignee of a Lender), the term "Affiliate" shall also include any Person that directly or indirectly owns 10% or more of any class of Capital Stock in the Person specified or that is an officer or director of the Person specified.

"Affiliated Lender" shall mean, at any time, any Lender that is an Affiliate of any Company (other than a Company) at such time; provided, in no case shall any natural person be an "Affiliated Lender."

"Affiliated Lender Cap" has the meaning set forth in Section 9.04(g)(iii).

"Agents" shall mean the Administrative Agent, the Collateral Agent and the Disbursement Agent.

"Aggregate Amounts Due" shall have the meaning given in Section 2.16.

"Aggregate Exposure" shall mean, with respect to any Lender at any time, an amount equal to the sum of (a) the amount of such Lender's Term A Loan Exposure and (b) the amount of such Lender's Term B Loan Exposure.

"Agreement" shall have the meaning given in the preamble to this Agreement.

"Alternate Base Rate" shall mean, for any day, a rate per annum equal to the greatest of (a) the Prime Rate in effect on such day, (b) the Federal Funds Effective Rate in effect on such day plus 1/2 of 1% and (c) except during any period of time during which a notice delivered to the Borrower under Section 2.17(a) or Section 2.17(b) shall remain in effect, the Adjusted LIBO Rate (after giving effect to any Adjusted LIBO Rate "floor") for a one month Interest Period on such day (or if such day is not a Business Day, the immediately preceding Business Day) plus 1.00%; provided that the Alternate Base Rate shall not be less than (x) in the case of Term A Loans, 0.00% and (y) in the case of Term B Loans, 2.00%; provided further that for the purpose of preceding clause (c), the Adjusted LIBO Rate for any day shall be based on the LIBO Rate for a one month Interest Period determined by the Administrative Agent on such day at approximately 11:00 a.m. (London time). If the Administrative Agent shall have determined (which determination shall be conclusive absent manifest error) that it is unable to ascertain the Federal Funds Effective Rate for any reason, the Alternate Base Rate shall be determined without regard to clause (b) of the preceding sentence until the circumstances giving rise to such inability no longer exist. Any change in the Alternate Base Rate due to a change in the Prime Rate, the Federal Funds Effective Rate or the Adjusted LIBO Rate shall be effective on the effective date of such change in the Prime Rate, the Federal Funds Effective Rate or the Adjusted LIBO Rate, as the case may be.

"Anti-Corruption Laws" shall mean all laws, rules and regulations of any jurisdiction applicable to the Borrower or any of its Subsidiaries or Unrestricted Subsidiaries from time to time concerning or relating to bribery or corruption, including the United States Foreign Corrupt Practices Act of 1977, as amended, and other similar legislation in any other jurisdictions.

"Anti-Terrorism Laws" shall mean all laws, rules and regulations relating to terrorism or money laundering, including Executive Order No. 13224, the Patriot Act, The Currency and Foreign Transactions Reporting Act (also known as the "Bank Secrecy Act," 31 U.S.C. §§ 5311-5330 and 12 U.S.C. §§ 1818(s), 1820(b) and 1951-1959), and the laws, regulations and executive orders administered by the United States Treasury Department's Office of Foreign Assets Control (as any of the foregoing laws may from time to time be amended, renewed, extended, or replaced).

"Applicable Margin" shall mean, for any day, (a) in the case of Term A Loans, (i) for LIBOR Loans, 5.00% per annum and (b) for ABR Loans, 4.00% per annum and (b) in the case of Term B Loans, (i) for LIBOR Loans, 8.25% per annum and (ii) for ABR Loans, 7.25% per annum.

"Approved Fund" shall mean any Fund that is administered, advised or managed by (a) a Lender, (b) an Affiliate of a Lender or (c) an entity (including an investment advisor) or an Affiliate of any entity that administers, advises or manages a Lender.

"Architectural Services Agreement" shall have the meaning given to the term in the Building Loan Disbursement Agreement.

"Asset Sale" shall mean the sale, lease, sublease, exchange, sale and leaseback, assignment, conveyance, transfer, grant of restriction, issuance or other disposition (by way of merger, casualty, condemnation or otherwise) by the Borrower or any other Loan Party to any Person other than a Loan Party of (a) any Capital Stock in any Subsidiary of the Borrower (other than directors' qualifying shares) or (b) any other assets of the Borrower or any other Loan Party, including Capital Stock in any Person that is not a Subsidiary of the Borrower (other than (i) inventory, goods, obsolete, surplus or worn out assets (including the abandonment or other disposition of Intellectual Property that is, in the reasonable judgment of the Borrower, no longer economically practicable to maintain or useful in the conduct of the business of the Borrower and the other Loan Parties), scrap and Cash (including amounts paid out as patron winnings) or Cash Equivalents, in each case disposed of in the ordinary course of business; (ii) the making of any Investment or Restricted Junior Payment permitted by this Agreement; (iii) the disposition of assets as a result of a Recovery Event (without giving effect to the proviso contained in the definition thereof); (iv) a substantially contemporaneous exchange or trade-in of equipment or inventory by the Borrower or any other Loan Party for other equipment or inventory so long as the Borrower or such other Loan Party effecting such exchange or trade-in receives at least substantially equivalent value in exchange or as trade-in for the property so disposed of; (v) the issuance by the Borrower of any Capital Stock; (vi) the incurrence of Permitted Liens; (vii) leases, subleases and licenses (including pursuant to the IDA Documents and with respect to trademarks, tradenames and other intellectual property and, in each case, including any amendments, modifications or supplements thereto), in each case in the ordinary course of business and in no event relating to gaming equipment or gaming operations; (viii) the disposition of assets in connection with the incurrence of Capital Lease Obligations and purchase money Indebtedness permitted pursuant to Section 6.01(j) with respect to such assets, (ix) the sale or other disposition of gaming machines in the ordinary course of business, and (x) the issuance or sale of Capital Stock in an Unrestricted Subsidiary); provided that asset sales described in clause (b) above having a value not in excess of $2,000,000 in the aggregate in any Fiscal Year shall be deemed not to be an "Asset Sale" for purposes of this Agreement.

"Assignee" shall have the meaning given in Section 9.04(c).

"Assignment and Acceptance" shall mean an assignment and acceptance entered into by a Lender and an assignee (with the consent of any Person whose consent is required by Section 9.04(c)), and accepted by the Administrative Agent substantially in the form of Exhibit G-1, or such other form as shall be approved by the Administrative Agent and the Borrower (such approval not to be unreasonably withheld, conditioned or delayed). To the extent approved by the Administrative Agent, an Assignment and Acceptance may be electronically executed and delivered to the Administrative Agent via an electronic settlement system then acceptable to the Administrative Agent.

"Assignment of Leases and Rents" shall mean (a) the Building Loan Absolute Assignment of Leases, Rents and Income, substantially in the form of Exhibit C-7, effective as of the date hereof, executed and delivered by the Borrower, Empire Sub I and the IDA in favor of the Collateral Agent for the benefit of the Secured Parties, (b) the Building Loan Absolute Assignment of Leases, Rents and Income, substantially in the form of Exhibit C-7, effective as of the date hereof, executed and delivered by Empire Sub II in favor of the Collateral Agent for the benefit of the Secured Parties and (c) each other assignment of leases and rents executed and delivered by a Loan Party in favor of the Collateral Agent for the benefit of the Secured Parties from time to time, in each case, in form and substance reasonably satisfactory to the Administrative Agent.

"Assignor" shall have the meaning given in Section 9.04(c).

"Authorized Officer" shall mean, as applied to any Person, any individual holding the position of chairman of the board (if an officer), chief executive officer, president or one of its vice presidents (or the equivalent thereof), such Person's chief financial officer or treasurer or any other authorized representative of such Person reasonably satisfactory to the Administrative Agent.

"Available Amount" shall mean, on any date, an amount equal to (a) $2,500,000; *plus*; (b) the cumulative amount (which shall not be less than zero) of Consolidated Excess Cash Flow for the period commencing on the first day of the first full Fiscal Quarter occurring after the Full Opening Date through the last day of the Fiscal Year most recently ended; *plus* (c) the cumulative amount of Cash and Cash Equivalents proceeds received after the Full Opening Date and on or prior to such date from any equity issuance by, or capital contribution to the Borrower (other than Disqualified Capital Stock, Specified Equity Contributions, payments made under the Completion Guaranty, Permitted Equity Contributions, amounts required to be contributed pursuant to either Disbursement Agreement, Required Equity Contributions, amounts applied to Project Costs and, without duplication, other amounts previously applied for purposes other than use in the Available Amount); *plus* (d) to the extent not already included in Consolidated Net Income and not otherwise utilized to replenish Investment capacity under Section 6.07 the aggregate the amount actually received by the Borrower or any Subsidiary Guarantor in Cash or Cash Equivalents after the Full Opening Date from any dividend or other distribution by an Unrestricted Subsidiary; *plus* (e) to the extent not already included in Consolidated Net Income an amount equal to any returns (including dividends, interest, distributions, returns of principal, profits on sale, repayments, income and similar amounts) actually received in Cash or Cash Equivalents by the Borrower or any Subsidiary Guarantor in respect of any Investments made pursuant to Section 6.07(m) so long as such amounts do not exceed the Investments made pursuant to Section 6.07(m); *plus* (f) to the extent not already included in Consolidated Net Income and not otherwise utilized to replenish Investment capacity under Section 6.07 the aggregate amount actually received in Cash or Cash Equivalents by the Borrower or any Subsidiary Guarantor in connection with the sale, transfer or other disposition of its ownership interest in any Unrestricted Subsidiary or joint venture (other than to the Borrower or any Subsidiary of the Borrower) that is not a Subsidiary Guarantor, in each case, to the extent of the Investment in such joint venture or Unrestricted Subsidiary; *minus* (g) the aggregate amount of Consolidated Excess Cash Flow that was required to be applied to the repayment of Loans pursuant to Section 2.13(c) or Revolving Loans pursuant to Section 2.13(c) of the Revolving Credit Agreement *minus* (h) without duplication, the aggregate principal amount of voluntary repayments

of Loans, Revolving Loans and the Regulatory Cash Amount applied to reduce the amount of the repayment of Loans pursuant to Section 2.13(c) or Revolving Loans pursuant to Section 2.13(c) of the Revolving Credit Agreement, in each case as a result of the operation of clauses (B) and (C) of such applicable Section 2.13(c); *minus* (i) the aggregate amount of any (i) Restricted Junior Payments made pursuant to Section 6.05(e), (ii) Investments made pursuant to Section 6.07(m), and (iii) Capital Expenditures made pursuant to Section 6.08(c)(vi), in each case, made since the Closing Date and on or prior to such date; provided, that in no event shall any Consolidated Excess Cash Flow for any Fiscal Year be included in the Available Amount until after the date financial statements and the related Compliance Certificate are delivered pursuant to Section 5.01(c) and Section 5.01(d) for such Fiscal year and the payment required to be made pursuant to Section 2.13(c) (or Section 2.13(c) of the Revolving Credit Agreement, as applicable) has been made in respect of such Fiscal Year.

"Bail-In Action" shall mean the exercise of any Write-Down and Conversion Powers by the applicable EEA Resolution Authority in respect of any liability of an EEA Financial Institution.

"Bail-In Legislation" shall mean, with respect to any EEA Member Country implementing Article 55 of Directive 2014/59/EU of the European Parliament and of the Council of the European Union, the implementing law for such EEA Member Country from time to time which is described in the EU Bail-In Legislation Schedule.

"Bankruptcy Code" shall mean Title 11 of the United States Code entitled "Bankruptcy", as now and hereafter in effect, or any successor statute.

"Bankruptcy Plan" shall have the meaning given in Section 9.04(i).

"Benefit Plan" shall mean any employee pension benefit plan (other than a Multiemployer Plan) subject to the provisions of Title IV of ERISA or Section 412 of the Tax Code, and in respect of which any Loan Party or any ERISA Affiliate is (or, if such plan were terminated, would under Section 4069 of ERISA be deemed to be) an "employer" as defined in Section 3(5) of ERISA.

"Blocked Person" shall have the meaning given in Section 3.30(b).

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

"Borrower" shall have the meaning given in the preamble to this Agreement.

"Borrowing" shall mean Loans of the same Class and Type made, converted or continued on the same date and, in the case of LIBOR Loans, as to which a single Interest Period is in effect.

"Breakage Event" shall have the meaning given in Section 2.17(c).

"Building Budget" shall have the meaning given in Section 4.01(w).

"Building Loan Costs" shall mean the hard and soft costs described in the Building Budget, which hard and soft costs constitute Costs of the Improvements.

"Building Loan Disbursement Agreement" shall mean the Building Loan Disbursement Agreement substantially in the form of Exhibit L-1, dated as of the date hereof, among the Administrative Agent, the Collateral Agent, the Borrower and the Disbursement Agent.

"Business Day" shall mean any day other than a Saturday, Sunday or day on which commercial banks in New York City are authorized or required by law to close; provided, however, that when used in connection with a LIBOR Loan (including with respect to all notices and determinations in connection therewith and any payments of principal, interest or other amounts thereon), the term "Business Day" shall also exclude any day on which banks are not open for dealings in Dollar deposits in the London interbank market.

"Capital Lease Obligations" shall mean, as to any Person, the obligations of such Person to pay rent or other amounts under any lease of (or other arrangement conveying the right to use) real or personal property, or a combination thereof, which obligations are required to be classified and accounted for as capital leases on a balance sheet of such Person under GAAP and in accordance with the last sentence of Section 1.04, and the amount of such obligations at any time shall be the capitalized amount thereof at such time determined in accordance with GAAP.

"Capital Stock" shall mean any and all shares, interests, participations or other equivalents (however designated) of capital stock in a corporation, any and all classes of membership interests in a limited liability company, any and all classes of partnership interests in a partnership, any and all equivalent ownership interests in a Person and any and all warrants, rights or options to purchase any of the foregoing.

"Carryover Amount" shall have the meaning given in Section 6.08(c).

"Cash" shall mean money, currency or a credit balance in any demand deposit account, in each case in Dollars.

"Cash Equivalents" shall mean, as at any date of determination, (a) marketable securities (i) issued or directly and unconditionally guaranteed as to interest and principal by the United States of America or (ii) issued by any agency of the United States of America, the obligations of which are backed by the full faith and credit of the United States of America, in each case maturing within one year after such date; (b) marketable direct obligations issued by any state of the United States of America or any political subdivision of any such state or any public instrumentality thereof or the District of Columbia, in each case maturing within one year after such date and having, at the time of the acquisition thereof, a rating of at least A-1 from S&P or at least P-1 from Moody's; (c) commercial paper maturing no more than one year from the date of creation thereof and having, at the time of the acquisition thereof, a rating of at least A-1 from S&P or at least P-1 from Moody's; (d) time deposit accounts, money market deposits, certificates of deposit or bankers' acceptances maturing within one year after such date and issued or accepted by a commercial bank that is (i) a Lender or (ii) (A) organized under the laws of the United States of America or any state thereof or the District of Columbia or that is the principal banking Subsidiary of a bank holding company

organized under the laws of the United States of America or any state thereof or the District of Columbia, and is a member of the Federal Reserve System and (B) has combined capital and surplus of at least $250,000,000; (e) repurchase obligations with a term of not more than 30 days for underlying securities of the types described in clause (a) above entered into with a bank meeting the qualifications described in clause (d) above; and (f) shares of any money market mutual fund (i) that has substantially all of its assets invested continuously in the types of investments referred to above or (ii) that complies with the criteria set forth in Rule 2a-7 under the Investment Company Act of 1940 and are rated AA+ by S&P and A-1 by Moody's.

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

"Casino Opening Date" shall have the meaning given to the term in the Building Loan Disbursement Agreement.

"Change in Control" shall mean that (a) except as permitted by Section 6.10, the Borrower shall at any time fail to directly or indirectly own, beneficially and of record on a fully diluted basis, 100% of each class of issued and outstanding Capital Stock in each Subsidiary Guarantor, (b) the Equity Pledgor shall at any time fail to directly own, beneficially and of record on a fully diluted basis, 100% of each class of issued and outstanding Capital Stock in the Borrower, (c) any Person or "group" (within the meaning of Rules 13d-3 and 13d-5 under the Securities and Exchange Act of 1934, as amended) other than any combination of the Permitted Holders shall own directly or indirectly, beneficially and of record on a fully diluted basis, a percentage of aggregate voting interests (including the voting power in an election of directors (or managers or the general partner or similar governing body)) in the Borrower greater than the percentage thereof owned directly or indirectly beneficially and of record on a fully diluted basis, collectively by the Permitted Holders at such time, or (d) any "Change in Control" (as defined in the Revolving Credit Agreement) shall occur.

"Change in Law" shall mean the occurrence, after the date of this Agreement, of any of the following: (a) the adoption or taking effect of any law, rule, regulation or treaty, (b) any change in any law, rule, regulation or treaty or in the administration, interpretation, implementation or application thereof by any Governmental Authority or (c) the making or issuance of any request, rule, guideline or directive (whether or not having the force of law) by any Governmental Authority; provided that, notwithstanding anything herein to the contrary, (x) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith and (y) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or United States or foreign regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to be a "Change in Law", regardless of the date enacted, adopted or issued.

"Charges" shall have the meaning given in Section 9.09.

"Class" shall mean (a) with respect to Lenders, each of the following classes of Lenders: (i) Lenders having Term A Loan Exposure and (ii) Lenders having Term B Loan Exposure; (b) with respect to Loans, each of the following classes of Loans: (i) Term A Loans and (ii) Term B Loans; and (c) with respect to Commitments, each of the following classes of Commitments: (i) Term A Loan Commitments and (ii) Term B Loan Commitments.

"Closing Certificate" shall mean a certificate substantially in the form of Exhibit J.

"Closing Date" shall mean the date of this Agreement.

"Closing Date Equity Contribution" shall mean $32,000,000.

"Collateral" shall mean all present and future Capital Stock in the Borrower (including all Pledged Collateral) and Property of the Loan Parties, now owned or hereafter acquired, upon which a Lien is purported to be created by any Security Document, and shall include the Mortgaged Properties (it being understood that the Collateral shall not include any Excluded Collateral).

"Collateral Account Control Agreement" shall mean the Collateral Account Control Agreement, substantially in the form of Exhibit C-4, dated as of the date hereof, among the Borrower, the Collateral Agent, the Revolving Collateral Agent, the Disbursement Agent and the securities intermediary thereunder.

"Collateral Agent" shall mean Credit Suisse AG, Cayman Islands Branch, in its capacity as collateral agent for the benefit of the Secured Parties, together with its permitted successors and assigns.

"Commitment" shall mean, with respect to any Lender, such Lender's Term A Loan Commitment and Term B Loan Commitment, and "Commitments" shall mean such commitments of all Lenders in the aggregate.

"Companies" shall mean (a) the Equity Pledgor, (b) the Loan Parties and (c) until the Completion Guaranty Termination Date, the Completion Guarantor.

"Company Funds Account" shall mean the "Building Loan Company Funds Account" (as defined in the Building Loan Disbursement Agreement) and/or the "Project Company Funds Account" (as defined in the Project Disbursement Agreement), as applicable.

"Completion" shall have the meaning given in the Building Loan Disbursement Agreement.

"Completion Date" shall have the meaning given in the Building Loan Disbursement Agreement.

"Completion Guaranty" shall mean the Completion Guaranty, substantially in the form of Exhibit C-6, dated as of the date hereof, made by the Completion Guarantor in favor of the Collateral Agent.

"Completion Guarantor" shall mean Empire Resorts, Inc., a Delaware corporation.

"Completion Guaranty Termination Date" shall have the meaning given in the Completion Guaranty.

"Compliance Certificate" shall mean a compliance certificate substantially in the form of Exhibit F.

"Consent" shall mean any of the consents to collateral assignment delivered pursuant Section 4.01(y) and any "Consents" referred to and as defined in the Disbursement Agreements.

"Consolidated Adjusted EBITDA" shall mean, for any period, Consolidated Net Income of the Borrower and its Subsidiaries for such period plus (a) without duplication and, other than in the case of clause (a)(vii) below, to the extent deducted in determining such Consolidated Net Income, the sum of, without duplication, (i) Consolidated Interest Expense for such period, (ii) consolidated income tax expense (if any) of the Borrower and its Subsidiaries for such period and, without duplication, any distributions made or expected to be made within the following twelve months pursuant to Section 6.05(b) with respect to such period, (iii) all amounts attributable to depreciation and amortization with respect to such period (including (A) goodwill impairment, (B) accelerated depreciation calculated in accordance with GAAP, (C) amortization of capitalized interest, (D) amortization of licensing fees, (E) amortization of deferred financing fees, and (F) amortization of original issue discount with respect to the Loans), (iv) any non-Cash charges (other than any non-Cash charge representing amortization of a prepaid Cash item that was paid and not expensed in a prior period (provided, for purposes of clarification, the foregoing shall not include writeoffs of unamortized capitalized fees)) for such period (including purchase accounting adjustments and writeoffs of unamortized fees, costs and expenses); provided that if any of the non-Cash charges referred to in this clause (iv) represents an accrual or reserve for potential Cash items in any future period, (1) the Borrower may determine not to add back such non-cash charge in the current period and (2) to the extent the Borrower does decide to add back such non-cash charge, the cash payment in respect thereof in such future period shall be subtracted from Consolidated Adjusted EBITDA in such future period to the extent paid in accordance with clause (b)(i) below, (v) any unusual or nonrecurring losses and expenses, (vi) all transaction fees, charges and other amounts related to the Transactions occurring on or about the Closing Date (including any financing fees, legal fees and expenses, due diligence fees or any other fees and expenses in connection therewith), (vii) to the extent not considered "income" of the Borrower for purposes of Consolidated Net Income for such period, business interruption insurance proceeds received in cash during such period, (viii) pre-opening and development expenses in connection with (x) the Project or (y) any development, expansion or new amenity at the Project, (ix) all expenses and charges which (A) are reimbursed to a Loan Party in cash by an indemnitee or insurance or otherwise paid for by a Person that is not an Affiliate of a Loan Party (to the extent such cash reimbursement or payment is not otherwise considered "income" of the Borrower and its Subsidiaries for purposes of Consolidated Net Income for such period) or (B) in the reasonable good faith determination of the Borrower, will be so reimbursed in cash within 365 days of the date of such determination (for purposes of clarification, if such amounts are reimbursed in cash within 365 days of such determination, such amounts shall not at such time of reimbursement be included in the calculation of Consolidated

Adjusted EBITDA), (x) any loss attributable to the early extinguishment or termination of Hedging Agreements, (xi) all administrative and collateral agency fees paid in such period with respect to Indebtedness, (xii) rental payments and charges on a GAAP basis with respect to the Ground Lease, the Entertainment Village Lease and the Golf Course Lease for such period, (xiii) costs and charges associated with amendments, modifications or supplements to any agreement relating to the Obligations, the Revolving Commitments or the Revolving Loans, (xiv) any costs or expense incurred by the Borrower pursuant to any management equity plan or stock option plan or any other management or employee benefit plan or agreement or any stock subscription or shareholder agreement, and (xv) any distributions made pursuant to Section 6.05(c) (provided that, to the extent that all or any portion of the income of any Person is excluded from Consolidated Net Income pursuant to the definition thereof for all or any portion of such period, any amounts set forth in the preceding clauses (i) through (xv) that are attributable to such Person shall not be included for purposes of this definition for such period or portion thereof), and minus (b) without duplication (i) all Cash payments made during such period on account of reserves, restructuring charges and other non-Cash charges added to Consolidated Net Income pursuant to clause (a)(iv) above in a previous period, (ii) to the extent included in determining such Consolidated Net Income, any interest income and all non-Cash items of income for such period (excluding any such non-Cash item to the extent it represents the reversal of an accrual or reserve for a potential Cash item in any prior period), all determined on a consolidated basis in accordance with GAAP, (iii) to the extent not deducted in determining Consolidated Net Income for such period, amounts distributed in accordance with Section 6.05(c) and Section 6.12(f) for such period, (iv) any income or gain attributable to the early extinguishment or termination of Hedging Agreements, (v) cancellation of Indebtedness income, (vi) actual cash rental payments under the Ground Lease, the Entertainment Village Lease and the Golf Course Lease and (vii) the amount of any expenses and charges added to Consolidated Net Income in a previous period pursuant to clause (a)(ix) above to the extent not reimbursed in cash within 365 days of the date of the reasonable good faith determination by the Borrower that such amounts will be so reimbursed.

"Consolidated Capital Expenditures" shall mean, for any period, the aggregate of all expenditures of the Borrower and its Subsidiaries during such period determined on a consolidated basis that, in accordance with GAAP, are or should be included in "purchase of property and equipment" or similar items reflected in the consolidated statement of cash flows of the Borrower and its Subsidiaries; provided that the amount of (a) any Project Costs, (b) any FF&E Costs and (c) the payment of licensing or other fees to the Gaming Authorities in an aggregate amount not to exceed $51,000,000 for the issuance of, or application for, the Borrower's Gaming License shall, in each case, be excluded from "Consolidated Capital Expenditures".

"Consolidated Cash Interest Expense" shall mean, for any period, Consolidated Interest Expense, net of interest income, for such period, excluding, without duplication, (a) any amount not paid in Cash during such period and (b) for purposes of the calculation of the Interest Coverage Ratio only, the amortization of debt issuance costs, debt discount or premium and other financing fees, charges and expenses incurred by such Person for such period (including any amounts referred to in Section 2.10 or with respect to letters of credit and banker's acceptance financing).

"Consolidated Current Assets" shall mean, as at any date of determination, the total assets of the Borrower and its Subsidiaries on a consolidated basis that may properly be classified as current assets in conformity with GAAP, excluding Cash and Cash Equivalents.

"Consolidated Current Liabilities" shall mean, as at any date of determination, the total liabilities of the Borrower and its Subsidiaries on a consolidated basis that may properly be classified as current liabilities in conformity with GAAP, excluding (i) the current portion of long term debt and (ii) any payments due to contractors and consultants related to the development of the Project to the extent such payments are to be made in accordance with the Project Budget.

"Consolidated Excess Cash Flow" shall mean, for any period, an amount (if positive) equal to: (a) the sum, without duplication, of the amounts for such period of (i) Consolidated Adjusted EBITDA (excluding any Specified Equity Contribution received by the Borrower), (ii) the Consolidated Working Capital Adjustment, (iii) to the extent received in Cash, interest income (except to the extent attributed to the accounts established under the Disbursement Agreements or otherwise attributable to periods prior to the Full Opening Date), (iv) to the extent received in Cash, any extraordinary income or gains and (v) to the extent received in Cash, income or gain subtracted from Consolidated Net Income in accordance with clause (b)(iv) of the definition of "Consolidated Adjusted EBITDA" minus (b) the sum, without duplication, of the amounts for such period of (i) voluntary and scheduled repayments of Consolidated Total Debt (excluding (x) repayments of Revolving Loans except to the extent made with internally generated cash and so long as the Revolving Commitments are permanently reduced in connection with (and in aggregate amount equal to) such repayments, (y) the voluntary repayments of Loans and (z) all such repayments made with the cash proceeds of Subordinated Indebtedness), (ii) Consolidated Capital Expenditures (net of Consolidated Capital Expenditures made with or otherwise reimbursed from any cash proceeds of (A) any related financings or capital contributions with respect to such expenditures, (B) any sales of assets used to finance such expenditures and (C) any casualty or condemnation, in each case that would not be included in Consolidated Adjusted EBITDA), (iii) Consolidated Cash Interest Expense (less any amounts paid during such period on account of Debt Service from the Interest Reserve Account or that are otherwise attributable to periods prior to the Full Opening Date), (iv) distributions paid or expected to be paid within the following twelve months in cash pursuant to Section 6.05(b) with respect to such period and (without duplication) consolidated income tax expense of the Borrower and its Subsidiaries, if any, paid or expected to be paid within the following twelve months in cash with respect to such period, (v) to the extent paid in Cash, any extraordinary expenses or losses and, to the extent paid in Cash and added to Consolidated Net Income in accordance with clause (a)(v) of the definition of "Consolidated Adjusted EBITDA", any unusual and nonrecurring expenses or losses, (vi) to the extent paid in Cash, expenses and charges that were added to Consolidated Net Income in accordance with clause (a)(vi) of the definition of "Consolidated Adjusted EBITDA", (vii) to the extent paid in Cash, expenses and charges added to Consolidated Net Income in accordance with clauses (a)(viii), (a)(x), (a)(xi), (a)(xiii), (a)(xiv) and (a)(xv) of the definition of "Consolidated Adjusted EBITDA" and (viii) to the extent paid in Cash, Investments made pursuant to Section 6.07(n) (net of the portion of any such Investment made with or otherwise reimbursed from any cash proceeds of (A) any related financings or capital contributions with respect to such Investments, (B) any sales of assets used to finance such Investments, and (C) any casualty or condemnation). Furthermore, any amounts added to

Consolidated Net Income in accordance with clause (a)(ix)(B) of the definition of Consolidated Adjusted EBITDA shall be excluded from Consolidated Adjusted EBITDA for purposes of the calculation of Consolidated Excess Cash Flow to the extent reimbursement in cash of such amounts is not received during the relevant period.

"Consolidated Interest Expense" shall mean, for any period, total interest expense (including that portion attributable to Capital Lease Obligations in accordance with GAAP and capitalized interest) of the Borrower and its Subsidiaries on a consolidated basis with respect to all outstanding Indebtedness of the Borrower and its Subsidiaries, including financing fees and the amortization thereof (including debt issuance costs, debt discount or premium and other financing fees, charges and expenses incurred by such Person for such period (including with respect to letters of credit and banker's acceptance financing)). For purposes of the foregoing, interest expense of any Person shall be determined after giving effect to any net payments made or received by such Person with respect to interest rate Hedging Agreements but shall exclude any non-cash interest expense attributable to the movement of the mark-to-market valuation of obligations in respect of Hedging Agreements or other derivative instruments pursuant to Statement of Financial Accounting Standards No. 133. For the avoidance of doubt, interest income shall not be considered when determining Consolidated Interest Expense.

"Consolidated Net Income" shall mean, for any period, the net income (or loss) of the Borrower and its Subsidiaries on a consolidated basis for such period taken as a single accounting period determined in conformity with GAAP, provided that there shall be excluded, without duplication, (i) the income (or loss) of (x) any Person (other than a Subsidiary of the Borrower) in which any other Person (other than the Borrower or any Subsidiary of the Borrower) has a joint interest or (y) any Person that is an Unrestricted Subsidiary, except (in either case) to the extent of the amount of dividends or other distributions actually paid in Cash to the Borrower or any Subsidiary (other than an Unrestricted Subsidiary) of the Borrower by such Person during such period, (ii) the income (or loss) of any Person accrued prior to the date it becomes a Subsidiary or is merged into or consolidated with the Borrower or any Subsidiary of the Borrower or that Person's assets are acquired by the Borrower or any Subsidiary of the Borrower, (iii) the income of any Subsidiary of the Borrower to the extent that the declaration or payment of dividends or similar distributions by that Subsidiary of that income is not at the time permitted by operation of the terms of its charter or any agreement, instrument, judgment, decree, order, statute, rule or governmental regulation applicable to that Subsidiary, (iv) any after-tax gains or losses attributable to Asset Sales or returned surplus assets of any Benefit Plan, and (v) to the extent not included in clauses (i) through (iv) above, any extraordinary gains or extraordinary losses. In addition, "Consolidated Net Income" shall exclude the cumulative effect of a change in accounting principles during such period.

"Consolidated Total Debt" shall mean, as at any date of determination, the aggregate stated balance sheet amount of all Indebtedness of the type described in clauses (a), (b), (c), (d), (f) (to the extent such letter of credit or similar instrument is drawn and not reimbursed), (i), and (k) (in the case of clause (k), as it applies to each of the foregoing clauses only) of the definition thereof of the Borrower and its Subsidiaries (other than Subordinated Indebtedness) determined on a consolidated basis in accordance with GAAP.

"Consolidated Working Capital" shall mean, as at any date of determination, the excess (or deficit) of Consolidated Current Assets over Consolidated Current Liabilities.

"Consolidated Working Capital Adjustment" shall mean, for any period on a consolidated basis, the amount (which may be a negative number) by which Consolidated Working Capital as of the beginning of such period exceeds (or is less than) Consolidated Working Capital as of the end of such period.

"Construction Budget" shall have the meaning given in Section 4.01(w).

"Construction Consultant" shall mean Inspection & Valuation International, a CBRE company or any other Person designated from time to time by the Administrative Agent (acting at the direction of the Required Lenders) and approved by the Borrower (such approval not to be unreasonably conditioned or delayed) to serve as the construction consultant hereunder.

"Contractual Obligation" shall mean, as applied to any Person, any provision of any Security issued by that Person or of any indenture, mortgage, deed of trust, contract, undertaking, agreement or other instrument to which that Person is a party or by which it or any of its properties is bound or to which it or any of its properties is subject.

"Control" shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ownership of voting securities, by contract or otherwise, and the terms "Controlling" and "Controlled" shall have meanings correlative thereto.

"Control Agreements" shall mean the Collateral Account Control Agreement, each control agreement entered into in accordance with the Disbursement Agreements or the Pledge and Security Agreement and each other control agreement executed from time to time by any Loan Party in favor of the Collateral Agent for the benefit of the Secured Parties pursuant to any Loan Document.

"Conversion/Continuation Date" shall mean the effective date of a conversion or continuation, as the case may be, as set forth in the applicable Conversion/Continuation Notice.

"Conversion/Continuation Notice" shall mean a Conversion/Continuation Notice substantially in the form of Exhibit B-2.

"Cost of Improvement Reimbursement Amount" shall mean an amount of proceeds of the Term B Loans equal to $110,000,000, such amount reflecting the reimbursement to the Borrower of Costs of the Improvements made with respect to the Project subsequent to the commencement of construction of the Project but prior to the Closing Date, such Costs of the Improvements being itemized as follows: costs on account of site work, concrete foundations, precast garage, structural steel, curtainwall, HVAC, plumbing, fire protection, electrical and elevators, all of which the Borrower represents and warrants are Costs of the Improvements.

"Costs of the Improvements" shall mean those expenditures defined as a "cost of improvement" under Section 2 of the Lien Law (the term "improvement" also defined therein).

"Credit Date" shall mean the date of a Credit Extension, which date shall in all cases be a Business Day.

"Credit Event" shall have the meaning given in Section 4.02.

"Credit Extension" shall mean the making of a Loan.

"Debt Service" shall mean, at any time, (a)(i)all Fees due and payable at such time to the Agents, the Lead Arranger, and the Lenders and (ii) all "Fees" (as defined in the Revolving Credit Agreement) due and payable at such time, (b) interest on Loans and Revolving Loans and, without duplication, interest on any outstanding reimbursement obligations with respect to Revolving Letters of Credit, in each case payable at such time (but in any event net of any payments to be made by any counterparty to any Hedging Agreement with respect thereto), (c) scheduled Loan principal payments and payments with respect to the principal amount of any outstanding reimbursement obligations with respect to Revolving Letters of Credit, in each case payable at such time, and (d) net payments, if any, due and payable at such time by the Borrower or any of its Subsidiaries pursuant to any Hedging Agreement.

"Debtor Relief Laws" shall mean Title 11 of the United States Code entitled "Bankruptcy," or any successor statute, and all other liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors, moratorium, rearrangement, receivership, insolvency, reorganization, or similar debtor relief laws of the United States or other applicable jurisdictions from time to time in effect.

"Default" shall mean any event or condition which constitutes an Event of Default or which upon notice, lapse of time or both (as provided in Section 7.01) would constitute an Event of Default.

"Default Rate" shall have the meaning given in Section 2.09.

"Defaulting Lender" shall mean, subject to Section 2.21(b), any Lender that (a) has failed to (i) fund all or any portion of its Loans within two Business Days of the date such Loans were required to be funded hereunder unless such Lender notifies the Administrative Agent and the Borrower in writing that such failure is the result of such Lender's determination that one or more conditions precedent to funding (each of which conditions precedent, together with any applicable default, shall be specifically identified in such writing) has not been satisfied, or (ii) pay to the Administrative Agent or any other Lender any other amount required to be paid by it hereunder within two Business Days of the date when due, (b) has notified the Borrower or the Administrative Agent in writing that it does not intend to comply with its funding obligations hereunder, or has made a public statement to that effect (unless such writing or public statement relates to such Lender's obligation to fund a Loan hereunder and states that such position is based on such Lender's determination that a condition precedent to funding (which condition precedent, together with any applicable default, shall be specifically identified in such writing or public statement) cannot be

satisfied), (c) has failed, within three Business Days after written request by the Administrative Agent or the Borrower, to confirm in writing to the Administrative Agent and the Borrower that it will comply with its prospective funding obligations hereunder (provided that such Lender shall cease to be a Defaulting Lender pursuant to this clause (c) upon receipt of such written confirmation by the Administrative Agent and the Borrower), or (d) has, or has a direct or indirect controlling parent company that has (in each case, after the Closing Date), (i) become the subject of a proceeding under any Debtor Relief Law, (ii) had appointed for it a receiver, custodian, conservator, trustee, administrator, assignee for the benefit of creditors or similar Person charged with reorganization or liquidation of its business or assets, including the Federal Deposit Insurance Corporation or any other state or federal regulatory authority acting in such a capacity, or (iii) become the subject of a Bail-in Action; provided that a Lender shall not be a Defaulting Lender solely by virtue of the ownership or acquisition of any equity interest in that Lender or any direct or indirect parent company thereof by a Governmental Authority so long as such ownership interest does not result in or provide such Lender with immunity from the jurisdiction of courts within the United States or from the enforcement of judgments or writs of attachment on its assets or permit such Lender (or such Governmental Authority) to reject, repudiate, disavow or disaffirm any contracts or agreements made with such Lender. Any determination by the Administrative Agent that a Lender is a Defaulting Lender under any one or more of clauses (a) through (d) above shall be conclusive and binding absent manifest error, and such Lender shall be deemed to be a Defaulting Lender (subject to Section 2.21(b)) upon delivery of written notice of such determination to the Borrower and each Lender.

"Development Documents" shall mean, collectively, (i) that certain Amended and Restated Master Development Agreement, dated as of December 28, 2015, by and among EPT Sub, EPR Sub, Adelaar Developer, the Borrower, Empire Sub I and Empire Sub II, as amended by that certain First Amendment to Amended and Restated Master Development Agreement, dated as of January 19, 2017, by and among EPT Sub, EPR Sub, Adelaar Developer, the Borrower, Empire Sub I and Empire Sub II; (ii) the Ground Lease, the Entertainment Village Lease and the Golf Course Lease; (iii) the Purchase Option Agreement; (iv) that certain Completion Guaranty (EPR Properties), dated as of December 28, 2015, by EPR Properties, for the benefit of the Borrower, Empire Sub I, Empire Sub II and Empire; (v) that certain Completion Guaranty (Empire Resorts, Inc.), dated as of December 28, 2015, by Empire, for the benefit of EPR Sub, EPT Sub, Adelaar Developer and EPR Properties; (vi) that certain Amended and Restated Master Declaration of Covenants, Conditions, Easements and Restrictions for Adelaar, dated as of December 28, 2015, by and among EPT Sub, EPR Sub, the Master Association and Adelaar Developer, as amended by that certain First Amendment to Amended and Restated Master Declaration of Covenants, Conditions, Easements and Restrictions for Adelaar, dated as of January 19, 2017, by and among EPT Sub, EPR Sub, the Master Association and Adelaar Developer; (vii) that certain Assignment and Assumption Agreement, dated as of December 28, 2015 by and between MRMI, as assignor, and the Borrower, as assignee; (viii) that certain Subordination, Non-Disturbance and Attornment Agreement, dated as of December 28, 2015, by and among EPR Sub, Adelaar Developer and Empire Sub I, as amended by that certain First Amendment to Subordination, Non-Disturbance and Attornment Agreement, dated as of January 19, 2017, by and among EPR Sub, Adelaar Developer and Empire Sub I; and (ix) that certain Subordination, Non-Disturbance and Attornment Agreement, dated as of December 28, 2015, by and among EPR Sub, Adelaar Developer and Empire Sub II, as amended by that certain

First Amendment to Subordination, Non-Disturbance and Attornment Agreement, dated as of January 19, 2017, by and among EPR Sub, Adelaar Developer and Empire Sub II.

"Deposit Account" shall mean a demand, time, savings, passbook or like account with a bank, savings and loan association, credit union or like organization, other than an account evidenced by a negotiable certificate of deposit.

"Disbursement" shall mean a "Disbursement" under and as defined in either Disbursement Agreement.

"Disbursement Agent" shall mean Credit Suisse AG, Cayman Islands Branch, and its permitted successors and assigns in the capacity of disbursement agent under the Disbursement Agreements.

"Disbursement Agreements" shall mean the Building Loan Disbursement Agreement and the Project Disbursement Agreement.

"Disbursement Agreement Event of Default" shall mean an "Event of Default" under (and as defined in) either Disbursement Agreement.

"Disbursement Request" shall mean a "Disbursement Request" under (and as defined in) either Disbursement Agreement.

"Discharge of Revolving Obligations" shall mean the "payment in full" (as defined in the Revolving Credit Agreement (as in effect on the date hereof)) of the Revolving Obligations.

"Disqualified Capital Stock" shall mean any Capital Stock that, by its terms (or by the terms of any security or other Capital Stock into which it is convertible or for which it is exchangeable), or upon the happening of any event or condition, (a) requires the payment of any dividends (other than dividends payable solely in shares of Qualified Capital Stock), (b) matures or is mandatorily redeemable or subject to mandatory repurchase or redemption or repurchase at the option of the holders thereof (other than solely for Qualified Capital Stock), in each case in whole or in part and whether upon the occurrence of any event, pursuant to a sinking fund obligation on a fixed date or otherwise (including as the result of a failure to maintain or achieve any financial performance standards) or (c) is or becomes convertible into or exchangeable for, automatically or at the option of any holder thereof, any Indebtedness, Capital Stock or other assets (other than Qualified Capital Stock), in the case of each of clauses (a), (b) and (c), prior to the date that is 91 days after the Term B Loan Maturity Date at the time of issuance of such Capital Stock (other than (i) following payment in full of the Obligations or (ii) upon a Change in Control; provided that any payment required pursuant to this clause (ii) is subject to the prior payment in full of the Obligations; provided, however, that if any such Capital Stock is issued to any employee or to any plan for the benefit of employees of the Borrower or its Subsidiaries or by any such plan to such employees, such Capital Stock shall not constitute Disqualified Capital Stock solely because it may be required to be repurchased by a Loan Party in order to satisfy applicable statutory or regulatory obligations or as a result of such employee's termination, death or disability).

"Disqualified Institution" shall mean, on any date, (a) any Person that (i) has failed to timely file pursuant to applicable Gaming Laws (1) any application requested in writing of that Person by any Gaming Authority in connection with any licensing, determination of suitability or qualification, or waiver of licensing required of that Person as a lender to the Borrower or (2) any required application or other papers requested in writing of that Person by any Gaming Authority in connection with any licensing, determination of the suitability, or waiver of licensing of that Person as a lender to the Borrower, (ii) has withdrawn (except where requested or permitted by the Gaming Authority) any such application or other required papers or (iii) by any final determination by a Gaming Authority pursuant to applicable Gaming Laws (1) has been determined as "unsuitable" or "disqualified" as a lender to the Borrower or (2) has been denied the issuance of any license or other approval required under applicable Gaming Laws to be held by it as a lender to the Borrower, (b) any Person designated by the Borrower as a "Disqualified Institution" by written notice delivered to the Administrative Agent on or prior to the date hereof, together with Affiliates thereof to the extent clearly identifiable as such on the basis of such Affiliate's name and (c) any other Person (including named Affiliates thereof), together with Affiliates thereof to the extent clearly identifiable as such on the basis of such Affiliate's name, that is a competitor of the Borrower or any of its Subsidiaries or Affiliates that owns or operates one or more gaming establishments (including any Person that directly or indirectly owns or Controls such Person but excluding bona fide debt funds, financial institutions or other similar institutional debt investors, in each case, so long as no competitor of the Borrower makes investment decisions for such Person or has the power, directly or indirectly, to direct or cause the direction of the investment decisions of such Person), which Person has been designated by the Borrower as a "Disqualified Institution" by written notice to the Administrative Agent not less than 5 Business Days prior to such date; provided that, in the case of Persons described in clauses (b) and (c) above, (x) "Disqualified Institutions" shall exclude any Person that the Borrower has designated as no longer being a "Disqualified Institution" by written notice delivered to the Administrative Agent from time to time and (y) the Administrative Agent may distribute the list of any Persons designated by the Borrower as a Disqualified Institution to the Lenders; and, provided further, that in no event shall (x) a Disqualified Institution include any Permitted Holder or any Affiliate thereof and (y) such a designation apply retroactively to disqualify any Lender prior to such designation becoming effective.

"Dollars" or "$" shall mean lawful money of the United States of America.

"EEA Financial Institution" shall mean (a) any credit institution or investment firm established in any EEA Member Country which is subject to the supervision of an EEA Resolution Authority, (b) any entity established in an EEA Member Country which is a parent of an institution described in clause (a) of this definition, or (c) any financial institution established in an EEA Member Country which is a subsidiary of an institution described in clauses (a) or (b) of this definition and is subject to consolidated supervision with its parent.

"EEA Member Country" shall mean any of the member states of the European Union, Iceland, Liechtenstein, and Norway.

"EEA Resolution Authority" shall mean any public administrative authority or any person entrusted with public administrative authority of any EEA Member Country (including any delegee) having responsibility for the resolution of any EEA Financial Institution.

"Eligible Assignee" shall mean (a) any commercial bank, insurance company, investment fund, mutual fund or other entity that is an "accredited investor" (as defined in Regulation D under the Securities Act) and which extends credit or buys loans as one of its businesses; and (b) any Lender, Affiliate of any Lender or Approved Fund; provided, that neither the Borrower, an Affiliate of the Borrower (other than any Affiliated Lender), any Defaulting Lender, any Defaulting Lender's Subsidiaries, any natural Person (or holding company, investment vehicle or trust for, or owned and operated for the primary benefit of, a natural Person (other than an Affiliated Lender)) nor, subject to Section 9.04(k), any Disqualified Institution shall be an Eligible Assignee.

"Empire" shall mean Empire Resorts, Inc., a Delaware corporation.

"Empire Sub I" shall mean Empire Resorts Real Estate I, LLC, a New York limited liability company.

"Empire Sub II" shall mean Empire Resorts Real Estate II, LLC, a New York limited liability company.

"Entertainment Village" shall have the meaning given in the Building Loan Disbursement Agreement.

"Entertainment Village Lease" shall mean that certain Sub-Lease, dated as of December 28, 2015, between Adelaar Developer and Empire Sub II, as amended by that certain First Amendment to Entertainment Village Lease, dated as of January 19, 2017, between Adelaar Developer and Empire Sub II.

"Environmental Claim" shall mean any written notice of violation, claim, action, suit, proceeding, demand, abatement order or other order or directive (conditional or otherwise), by any Governmental Authority or any other Person, arising (a) pursuant to or in connection with any actual or alleged violation of any Environmental Law; (b) in connection with any Hazardous Material or any actual or alleged Hazardous Materials Activity; or (c) in connection with any actual or alleged damage, injury, threat or harm to health and safety (as they relate to exposure to Hazardous Materials), natural resources or the environment.

"Environmental Indemnity Agreements" shall mean (a) the Environmental Indemnity Agreement, substantially in the form of Exhibit E, dated as of the date hereof, executed and delivered by the Borrower in favor of the Administrative Agent and the Lenders, (b) the Environmental Indemnity Agreement, substantially in the form of Exhibit E, dated as of the date hereof, executed and delivered by the Borrower and Empire Sub I in favor of the Administrative Agent and the Lenders, (c) the Environmental Indemnity Agreement, substantially in the form of Exhibit E, dated as of the date hereof, executed and delivered by the Borrower and Empire Sub II in favor of the Administrative Agent and the Lenders and (d) each other environmental indemnity

agreement executed and delivered by a Loan Party in favor of the Administrative Agent and the Lenders from time to time, substantially in the form of Exhibit E, with such changes as shall be advisable under the law of the jurisdiction governing such environmental indemnity agreement and as are reasonably satisfactory to the Administrative Agent.

"Environmental Laws" shall mean all applicable Federal, state, local and foreign laws (including common law), treaties, regulations, rules, ordinances, codes, decrees, judgments, directives, orders (including consent orders), and agreements, in each case having the force and effect of law and relating to protection of the environment, the protection of natural resources, the protection of public health and safety from environmental hazards or the presence of, Release or threatened Release of, or exposure to, Hazardous Materials, or the generation, manufacture, processing, distribution, use, treatment, storage, transport, recycling or handling of, or the arrangement for such activities with respect to, Hazardous Materials.

"Environmental Liability" shall mean all liabilities, obligations, damages, losses, claims, actions, suits, judgments, orders, fines, penalties, fees, expenses and costs (including administrative oversight costs, natural resource damages and remediation costs), whether contingent or otherwise, arising out of or relating to (a) compliance or non-compliance with any Environmental Law, (b) the generation, use, handling, transportation, storage, treatment or disposal of any Hazardous Materials, (c) exposure to any Hazardous Materials, (d) the Release or threatened Release of any Hazardous Materials, (e) any Hazardous Materials Activity or (f) any contract, agreement or other consensual arrangement pursuant to which liability is assumed or imposed with respect to any of the foregoing.

"Environmental Permit" shall mean any Permit required by any applicable Environmental Law.

"EPR Sub" shall mean EPR Concord II, L.P., a Delaware limited partnership.

"EPT Sub" shall mean EPT Concord II, LLC, a Delaware limited liability company.

"Equity Pledge Agreement" shall mean that certain Equity Pledge Agreement, substantially in the form of Exhibit C-3, dated as of the date hereof, among the Equity Pledgor, the Borrower and the Collateral Agent; provided that in the event of the consummation of an Equity Pledgor Transaction, "Equity Pledge Agreement" shall be deemed to refer to the Equity Pledge Agreement entered into by Empire in connection therewith (and, in such case, the Collateral Agent shall, at the cost of the Borrower, release the replaced Equity Pledgor from its Equity Pledge Agreement pursuant to documentation reasonably acceptable to the Collateral Agent).

"Equity Pledgor" shall mean Montreign Holding Company, LLC, a New York limited liability company; provided that, in the event of the consummation of an Equity Pledgor Transaction, "Equity Pledgor" shall be deemed to refer to Empire.

"Equity Pledgor Transaction" shall mean a transaction pursuant to which Empire acquires a direct interest in 100% of each class of issued and outstanding Capital Stock of the Borrower; provided that in connection with such acquisition, Empire shall execute and deliver to

the Administrative Agent and the Collateral Agent a new Equity Pledge Agreement or an assignment of the then existing Equity Pledge Agreement, in either case, in form and substance reasonably satisfactory to the Collateral Agent, and take all such other actions and execute and deliver, or cause to be executed and delivered, to the extent applicable, all such documents, instruments, agreements, and certificates as are similar to those described in Section 4.01(a), Section 4.01(b), Section 4.01(d), Section 4.01(e), Section 4.01(f), Section 4.01(j) and Section 4.01(k).

"ERISA" shall mean the Employee Retirement Income Security Act of 1974, as amended from time to time, and the regulations issued thereunder.

"ERISA Affiliate" shall mean any trade or business (whether or not incorporated) that, together with any Loan Party, is treated as a single employer under Section 414(b) or (c) of the Tax Code, or solely for purposes of Section 302 of ERISA and Section 412 of the Tax Code, is treated as a single employer under Section 414 of the Tax Code.

"ERISA Event" shall mean (a) any "reportable event", as defined in Section 4043(c) of ERISA or the regulations issued thereunder, with respect to a Benefit Plan (other than an event for which the 30-day notice period is waived by regulation); (b) a Benefit Plan is in "at risk" status under Section 430 of the Tax Code or Section 303 of ERISA; (c) the filing pursuant to Section 412(c) of the Tax Code or Section 302(c) of ERISA of an application for a waiver of the minimum funding standard with respect to any Benefit Plan; (d) the incurrence by any Loan Party or any of its ERISA Affiliates of any liability under Title IV of ERISA with respect to the termination of any Benefit Plan or the withdrawal or partial withdrawal of any Loan Party or any of its ERISA Affiliates from any Benefit Plan or Multiemployer Plan; (e) the receipt by any Loan Party or any of its ERISA Affiliates from the PBGC or a plan administrator of any notice relating to the intention to terminate any Benefit Plan or to appoint a trustee to administer any Benefit Plan; (f) the adoption of any amendment to a Benefit Plan that would require the provision of security pursuant to Section 436(f) of the Tax Code; (g) the receipt by any Loan Party or any of its ERISA Affiliates of any notice, or the receipt by any Multiemployer Plan from any Loan Party or any of its ERISA Affiliates of any notice, concerning the imposition of Withdrawal Liability or a determination that a Multiemployer Plan is, or is expected to be, insolvent or in reorganization, within the meaning of Title IV of ERISA or in critical or endangered status under Section 432 of the Tax Code or Section 305 of ERISA; (h) the occurrence of a nonexempt "prohibited transaction" (within the meaning of Section 4975 of the Tax Code) caused by any Loan Party holding "plan assets" (within the meaning of Section 3(42) of ERISA) or with respect to which any Loan Party could otherwise reasonably be expected to incur any liability; (i) a Lien shall arise under Section 430(k) of the Tax Code or Section 303(k) of ERISA; or (j) any other event or condition with respect to a Benefit Plan or Multiemployer Plan that could reasonably be expected to result in material liability of any Loan Party.

"EU Bail-In Legislation Schedule" shall mean the EU Bail-In Legislation Schedule published by the Loan Market Association (or any successor person), as in effect from time to time.

"EV Contract" shall have the meaning given in the Building Loan Disbursement Agreement.

"Event of Default" shall have the meaning given in Section 7.01.

"Excluded Accounts" shall have the meaning given to such term in the Pledge and Security Agreement.

"Excluded Collateral" shall mean (a) any license, permit, or authorization issued by any of the Gaming Authorities or any other Governmental Authority or any other assets (including any Gaming License and any Gaming Reserves), in each case, solely to the extent a security interest therein is prohibited under Gaming Laws or other applicable law, or under the terms of any such license, permit, or authorization, or which would require a consent, finding of suitability or other similar approval or procedure by any of the Gaming Authorities or any other Governmental Authority prior to being pledged, hypothecated, or given as collateral security (to the extent such consent, finding or approval has not been obtained); (b) any lease, license, contract or agreement to which any Loan Party is a party or any of its rights or interests thereunder if and for so long as the grant of a security interest therein shall (x) constitute or result in (i) the abandonment, invalidation or unenforceability of any right, title or interest of any Loan Party therein or (ii) a breach or termination pursuant to the terms of, or a default under, any such lease, license, contract or agreement or (y) pursuant thereto require any consent to assignment of such lease, license, contract or agreement from any Person other than the Borrower and its Affiliates which has not been obtained (unless, in the case of exclusions referred to in clauses (a) and/or (b) above, such law, rule, regulation, term, provision or condition would be rendered ineffective with respect to the creation of the security interest hereunder pursuant to Sections 9-406, 9-407, 9-408 or 9-409 of the UCC (or any successor provision or provisions) of any relevant jurisdiction or any other applicable law (including any Debtor Relief Law) or principles of equity), provided, however, that the Collateral shall include (and such security interest shall attach) immediately at such time as the contractual or legal prohibitions described in clauses (a) and/or (b) above shall no longer be applicable and to the extent severable, shall attach immediately to any portion of such lease, license, contract, permit, authorization or agreement not subject to the prohibition specified above; (c) assets sold to a Person which is not a Loan Party in compliance with the Loan Documents; (d) assets to the extent owned by a Subsidiary Guarantor after the release of the guarantee of such Subsidiary Guarantor in accordance with the Subsidiary Guaranty and the release of such Subsidiary Guarantor from the Pledge and Security Agreement in accordance with the terms thereof; (e) assets subject to a Lien permitted by Section 6.02(m) (including Specified FF&E Collateral) to the extent the documents related to such Lien prohibit the granting of a security interest under the Security Documents; (f) any "intent-to-use" trademark application for registration of a Trademark filed pursuant to Section 1(b) of the Lanham Act, 15 U.S.C. §1051, prior to the filing of a "Statement of Use" pursuant to Section 1(d) of the Lanham Act or an "Amendment to Allege Use" pursuant to Section 1(c) of the Lanham Act with respect thereto, to the extent and for so long as creation by a Loan Party of a security interest therein would impair the validity or enforceability of any registration that issues from such intent-to-use trademark application; (g) any Excluded Accounts; (h) any Excluded Leased Real Property; (i) any Specified Hedging Agreement or Specified Cash Management Agreement or any Specified Cash Management Agreement (as defined in the Revolving Credit Agreement); and (j) any Cash Collateral (as defined in the Revolving Facility) pledged, delivered or deposited pursuant to Section 2.14(b), 2.22, 2.23 or 7.01 of the Revolving Facility as in effect on the Closing Date. Notwithstanding the foregoing, (x) all Proceeds and Sale Proceeds (each as defined in the

Security Documents) of the Excluded Collateral (other than those specified pursuant to clause (d) or (e) above) shall constitute Collateral and shall be included within the property and assets over which a security interest is granted pursuant to the Security Documents, unless such Proceeds or Sale Proceeds would independently constitute Excluded Collateral and (y) Excluded Collateral shall not include any Property of any of the Loan Parties (other than cash collateral described in clause (j) of the preceding sentence) to which a Lien permitted pursuant to Section 6.02(x) attaches (or purports to attach).

"Excluded Leased Real Property" shall mean any lease or license (or sublease or sublicense) of Real Property by the Borrower or its Subsidiaries of (a) warehouse space utilized for the storage of equipment in the ordinary course of business, (b) office space for administrative services in the ordinary course of business, (c) suites or skyboxes at entertainment venues for the purpose of hosting customers, employees and other Persons at events occurring at such entertainment venues, (d) signs used for marketing and other purposes in the ordinary course of business, or (e) other Real Property not otherwise covered by clauses (a) through (e) above, so long as the aggregate rents or other payments thereunder in the aggregate over the term of all such leases and licenses (including any renewals solely at the option of the Borrower or any Subsidiary), plus the aggregate amount of all Consolidated Capital Expenditures and Project Costs made by the Borrower and its Subsidiaries with respect to the Real Property encumbered by all such leases and licenses, does not exceed $5,000,000; provided, that (i) the aggregate rent to be paid by the Borrower and its Subsidiaries under all leases or licenses of Real Property described in clauses (a) through (e) above shall not be material to the value of the overall business of the Borrower and its Subsidiaries, taken as a whole, (ii) no such lease or license shall be required to be maintained by the Borrower or any of its Subsidiaries pursuant to any Legal Requirement, including any zoning law or Gaming Law, in order for the Borrower or any of its Subsidiaries to operate the Project, and (iii) no such lease or license shall be deemed "Excluded Leased Real Property" to the extent the loss thereof could reasonably be expected to have a Material Adverse Effect. For purposes of clarification, the Real Property leased by the Borrower pursuant to the IDA Leaseback Agreement, the Ground Lease, the Entertainment Village Lease and the Golf Course Lease shall not be deemed Excluded Leased Real Property.

"Excluded Swap Obligations" shall have the meaning given to such term in the Pledge and Security Agreement.

"Excluded Taxes" shall mean, with respect to the Administrative Agent or any Lender, (a) Taxes imposed on (or measured by) such recipient's net income (however denominated) and franchise (and any similar) Taxes imposed in lieu of net income Taxes, in each case (x) by the jurisdiction under the laws of which such recipient is organized (or any political subdivision thereof), or in which its principal office is located or, in the case of any Lender, in which its applicable lending office is located or (y) that are Other Connection Taxes, (b) any branch profits taxes imposed by any jurisdiction (or any political subdivision thereof) described in clause (a) above, (c) in the case of any Lender (other than an assignee pursuant to a request by the Borrower under Section 2.20 or Section 2.22), any U.S. federal withholding Tax that is imposed on amounts payable to such Lender under the law applicable at the time such Lender becomes a party to this Agreement (or designates a new lending office), except to the extent that at the time of designation of a new lending office

(or assignment) any such Lender (or its assignor, if any) was entitled to receive additional amounts from the Borrower or any other Company with respect to such withholding tax pursuant to Section 2.19(a), (d) any U.S. federal withholding Tax attributable to any Lender or the Administrative Agent's failure to comply with Section 2.19(e) or (f), and (e) any U.S. federal withholding Taxes imposed under FATCA.

"Executive Order No. 13224" shall mean the Executive Order No. 13224 on Terrorist Financing, effective September 24, 2001, as the same as been, or shall hereafter be, renewed, extended, amended or replaced.

"Facility" shall mean the Commitments and the Loans made thereunder.

"Family Group" shall mean an individual's siblings, former or then current spouse, lineal ancestors, and/or descendants (whether by birth or adoption) and descendants (whether by birth or adoption) of the individual's siblings or former or then current spouse, and any trust, partnership, limited partnership, limited liability company or other similar entity wherever organized, or retirement account primarily for the benefit of the individual and/or the individual's siblings, former or then current spouse, lineal ancestors, and/or descendants (whether by birth or adoption) and descendants (whether by birth or adoption) of the individual's siblings or former or then current spouse and the personal estate of any of the foregoing Persons.

"FATCA" shall mean Sections 1471 through 1474 of the Tax Code, as of the date of this Agreement (or any amended or successor version that is substantively comparable and not materially more onerous to comply with), any current or future regulations or official interpretations thereof, and any agreements entered into pursuant to Section 1471(b)(1) of the Tax Code (or any amended or successor version described above) or any fiscal or regulatory legislation, or other official rules or practices adopted pursuant to, or in connection with, any intergovernmental agreement, treaty, convention or other official agreement among Governmental Authorities entered into in connection with the implementation of the foregoing.

"Federal Funds Effective Rate" shall mean, for any day, the rate per annum equal to the weighted average of the rates on overnight federal funds transactions with members of the Federal Reserve System (or, if such day is not a Business Day, for the immediately preceding Business Day), as published by the Federal Reserve Bank of New York on the Business Day next succeeding such day.

"Fee Letter" shall mean that certain Senior Secured First Lien Term Loan Credit Facility Engagement Letter, dated as of November 14, 2016, by and among Credit Suisse AG, Cayman Islands Branch, Credit Suisse Securities (USA) LLC and the Borrower.

"Fees" shall mean all fees payable by the Borrower or any Affiliate of the Borrower to the Lead Arranger, the Agents, the Lenders or any other Person under or in connection with the Facility, including all fees described in Section 2.10 and the Fee Letter.

"FF&E Agreements" shall have the meaning given in Section 5.17.

"FF&E Costs" shall have the meaning given in the Project Disbursement Agreement.

"Final Completion" shall have the meaning given in the Building Loan Disbursement Agreement.

"Financial Officer" of any Person shall mean the chief financial officer, principal accounting officer or treasurer of such Person or, any other authorized representative of such Person reasonably satisfactory to the Administrative Agent.

"Financial Officer Certification" shall mean, with respect to the financial statements for which such certification is required, the certification of a Financial Officer of the Borrower that such financial statements fairly present, in all material respects, the financial condition of the Borrower and its Subsidiaries as at the dates indicated and the results of their operations and their cash flows for the periods indicated in accordance with GAAP, subject, with respect to financial statements delivered for any month or Fiscal Quarter, to changes resulting from audit and normal year-end adjustments and the absence of footnotes.

"Financial Plan" shall have the meaning given in Section 5.01(i).

"First Lien Debt" shall mean, as at any date of determination, Consolidated Total Debt that is secured by Liens on any Property of the Borrower or its Subsidiaries which, to the extent such Property constitutes Collateral, is not junior in priority to the Lien on such Property securing the Obligations.

"First Lien Leverage Ratio" shall mean, on any date, the ratio of (a) all First Lien Debt outstanding on such date to (b) Consolidated Adjusted EBITDA for the period of four consecutive Fiscal Quarters most recently ended on or prior to such date (subject to such adjustments as are specified in Section 6.08(b)), taken as one accounting period.

"Fiscal Quarter" shall mean a fiscal quarter of any Fiscal Year.

"Fiscal Year" shall mean the fiscal year of the Loan Parties ending on December 31 of each calendar year.

"Foreign Lender" shall mean any Lender (or, if such Lender is a disregarded entity for United States federal income tax purposes, the Person treated, for United States federal income tax purposes, as the regarded owner of the assets of such Lender) that is not a "United States person" as defined under Section 7701(a)(30) of the Tax Code.

"Full Opening Date" shall mean the later of (a) the Casino Opening Date and (b) the date upon which at least 95% of all of the rooms of the Hotel (as defined in the Building Loan Disbursement Agreement) are open to the public.

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

"Funding Notice" shall mean a notice substantially in the form of Exhibit B-1.

"GAAP" shall mean generally accepted accounting principles in the United States.

"Gaming Authorities" shall mean the applicable gaming board, commission or other Governmental Authority responsible for interpreting, administering and enforcing the Gaming Laws applicable to the Borrower, any other Loan Party or the Project, including the New York State Gaming Commission.

"Gaming Laws" shall mean all laws, rules, regulations, orders and other enactments applicable to gaming privileges, operations or activities with respect to the Borrower, any other Loan Party or the Project, as applicable, as in effect from time to time, including the policies, interpretations and administration thereof by any Gaming Authority.

"Gaming License Conditions" shall mean the License Conditions attached as Exhibit 1 to that certain Gaming Facility License Award Montreign Operating Company, LLC, and any amendments, modifications and supplements thereto permitted hereunder.

"Gaming Licenses" shall mean any licenses, permits, franchises, approvals, regulations, findings of suitability or other authorizations from any Gaming Authority or other Governmental Authority required to own, develop, lease or operate (directly or indirectly) the Project because of the gaming operations conducted or proposed to be conducted thereat or by any Loan Party, including all such licenses, permits, franchises, approvals, regulations, findings of suitability or other authorizations granted under Gaming Laws or any other Legal Requirement related thereto.

"Gaming Reserves" shall mean any mandatory gaming security reserves or other reserves required under applicable Gaming Laws or by directive of any Gaming Authorities related thereto that in any such case are required pursuant to applicable Gaming Laws to be maintained at the Project in the form of "cage cash" or otherwise constitute Excluded Collateral.

"General Contract" shall mean the Construction Management Agreement, as defined in the Building Loan Disbursement Agreement.

"Golf Course" shall mean an 18-hole golf course to be located on the Real Property subject to the Golf Course Lease.

"Golf Course Amount" shall mean at any time of determination $19,595,257 less any amounts previously deposited into the Golf Course Equity Account or the Golf Course Loan Account.

"Golf Course Equity Account" shall mean an account established with M&T Bank (or any replacement bank substituted therefor), subject to a Control Agreement, and subjected to perfected liens to secure the Obligations.

"Golf Course Equity Amount" shall mean at any time the aggregate amount of Required Equity Contributions to be made after such time and applied to Golf Course Expenditures

as determined in good faith by the Borrower; provided that at all times the sum of the Golf Course Equity Amount and the Golf Course Loan Amount shall equal the Golf Course Amount.

"Golf Course Lease" shall mean that certain Sub-Lease, dated as of December 28, 2015, between Adelaar Developer and Empire Sub I, as amended by that certain First Amendment to Golf Course Lease, dated as of January 19, 2017, by and between Adelaar Developer and Empire Sub I.

"Golf Course Loan Account" shall mean an account established with M&T Bank (or any replacement bank substituted therefor), subject to a Control Agreement, and subjected to perfected liens to secure the Obligations.

"Golf Course Loan Amount" shall mean at any time the aggregate amount of proceeds of Term A Loans anticipated to be borrowed after such time and applied to Golf Course Expenditures as determined in good faith by the Borrower; provided that at all times the sum of the Golf Course Equity Amount and the Golf Course Loan Amount shall equal the Golf Course Amount.

"Golf Course Expenditures" shall mean expenditures (including Capital Expenditures) made by the Loan Parties in furtherance of the development of the Golf Course.

"Governing Documents" shall mean, as to any Person, the articles or certificate of incorporation and bylaws, any certificate of limited partnership, any shareholders' agreement, articles of organization, certificate of organization, or certificate of formation, limited liability company agreement, operating agreement, limited partnership agreement or other partnership agreement or other formation or constituent documents of such Person.

"Governmental Acts" shall mean any act or omission, whether rightful or wrongful, of any present or future de jure or de facto government or Governmental Authority.

"Governmental Authority" shall mean the government of the United States of America or any other nation, any political subdivision thereof, whether federal, state or local, and any agency, authority (including any Gaming Authority), instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government (including any supra-national bodies such as the European Union or the European Central Bank).

"Ground Lease" shall mean that certain Lease dated as of December 28, 2015, by and between EPT Sub and the Borrower, as amended by that certain First Amendment to Casino Lease, dated as of January 19, 2017, by and between EPT Sub and the Borrower.

"Guarantee" of or by any Person (for purposes of this definition, the "guarantor") shall mean any obligation, contingent or otherwise, of (a) the guarantor or (b) another Person (including any bank under a letter of credit) to induce the creation of which the guarantor has issued a reimbursement, counterindemnity or similar obligation, in either case guaranteeing or having the economic effect of guaranteeing any Indebtedness or other obligation of any other Person (the "primary obligor") in any manner, whether directly or indirectly, and including any obligation,

contingent or otherwise, of the guarantor, direct or indirect, (i) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness or other obligation or to purchase (or to advance or supply funds for the purchase of) any security for the payment of such Indebtedness or other obligation, (ii) to purchase or lease property, securities or services for the purpose of assuring the owner of such Indebtedness or other obligation of the payment of such Indebtedness or other obligation, (iii) to maintain working capital, equity capital or any other financial statement condition or liquidity of the primary obligor so as to enable the primary obligor to pay such Indebtedness or other obligation or maintain solvency or net worth, (iv) as an account party in respect of any letter of credit or letter of guaranty issued to support such Indebtedness or obligation or (v) to otherwise assure or hold harmless the owner of such Indebtedness or other obligation against loss in respect thereof; provided, however, that the term "Guarantee" shall not include endorsements for collection or deposit in the ordinary course of business. The amount of any obligation under a Guarantee of a guarantor shall be deemed to be the lower of (A) an amount equal to the stated or determinable amount of the primary obligation in respect of which such Guarantee is made and (B) the maximum amount for which such guarantor may be liable pursuant to the terms of the instrument embodying such Guarantee, unless such primary obligation and the maximum amount for which such guarantor may be liable are not stated or determinable, in which case the amount of such obligation shall be such guarantor's maximum reasonably anticipated liability in respect thereof as determined by the Borrower in good faith.

"Hazardous Materials" shall mean any petroleum (including crude oil or fraction thereof) or petroleum products or byproducts, or any pollutant, contaminant, chemical, hazardous, or toxic substances, materials or wastes, in each case defined as such, or regulated by, or pursuant to, any Environmental Law, or requiring removal, remediation or reporting under any Environmental Law, including asbestos, or asbestos containing material, radon or other radioactive material, polychlorinated biphenyls and urea formaldehyde insulation.

"Hazardous Materials Activity" shall mean any past, current or proposed activity, event or occurrence involving any Hazardous Materials, including the use, manufacture, possession, storage, holding, presence, existence, location, Release, threatened Release, discharge, placement, generation, transportation, processing, construction, treatment, abatement, removal, remediation, disposal, disposition or handling of any Hazardous Materials, and any corrective action or response action with respect to any of the foregoing.

"Hedging Agreement" shall mean any agreement with respect to any swap, forward, cap, collar, future or derivative transaction or option or similar agreement involving, or settled by reference to, one or more rates, currencies, fuel or other commodities, equity or debt instruments or securities, or economic, financial or pricing indices or measures of economic, financial or pricing risk or value or any similar transaction or any combination of these transactions; provided, however, that no phantom stock or similar plan providing for payments on account of services provided by current or former directors, officers, employees or consultants of any Loan Party shall be a Hedging Agreement.

"IDA" shall mean the County of Sullivan Industrial Development Agency.

"IDA Documents" shall mean, collectively, (I) (a) that certain Amended and Restated Agent Agreement, dated as of September 18, 2015, among the Borrower, the IDA and MRMI, (b) that certain Amended and Restated Payment in Lieu of Tax Agreement, dated as of October 1, 2015, among the Borrower, MRMI and the IDA, (c) the IDA Lease Agreement, (d) the IDA Leaseback Agreement, (e) that certain Bill of Sale to Agency, dated as of October 1, 2015, executed by the Borrower and MRMI in favor of the IDA, (f) that certain Bill of Sale to Company, dated as of October 1, 2015, executed by the IDA in favor of MRMI and the Borrower, (g) that certain Environmental Compliance and Indemnification Agreement, dated as of September 5, 2014, by and among IDA, MRMI and the Borrower, and (h) that certain Closing Conditions Letter, dated as of September 5, 2014, among the IDA, the Borrower, MRMI, EPT Sub and EPR Sub, as amended by that certain Amendment to September 5, 2014 Closing Conditions Letter, dated as of May 1, 2015, by and among, the IDA, the Borrower and MRMI, as further amended by that certain Closing Conditions Letter, dated as of October 1, 2015, by and among the IDA, the Borrower and MRMI, in each case, as assigned and/or amended, as applicable, by that certain Omnibus Assignment and Assumption Agreement dated as of November 21, 2016, by and among MRMI, the Borrower and the IDA and that certain Omnibus Amendment to Project Documents, dated as of January 19, 2017, between the Borrower and IDA, (II) (a) that certain Agent and Project Agreement, dated as of December 22, 2016, between Empire Sub I and the IDA, (b) that certain Payment in Lieu of Taxation Agreement, dated as of December 22, 2016, between Empire Sub I and the IDA, (c) that certain Bill of Sale to Agency, dated as of December 22, 2016, executed by Empire Sub I in favor of the IDA, (d) that certain Bill of Sale to Company, dated as of December 22, 2016, executed by the IDA in favor of Empire Sub I, (e) that certain Environmental Compliance and Indemnification Agreement, dated as of December 22, 2016, between the IDA and Empire Sub I, (f) that certain Informational Letter Regarding Sales and Use Tax Exemptions, dated as of December 22, 2016, by the IDA, and (g) that certain New York State Sales and Use Tax Exemption Letter, dated as of December 22, 2016, by the IDA, in each case, as amended, as applicable, by that certain Omnibus Amendment to Project Documents, dated as of January 19, 2017, between Empire Sub I and the IDA, and (III) any other similar agreements entered into among the IDA and Empire Sub II with respect to the Entertainment Village.

"IDA Lease Agreement" shall mean (a) that certain Amended and Restated Lease to Agency dated as of October 1, 2015, among the Borrower, MRMI and the IDA, as assigned and amended by that certain Omnibus Assignment and Assumption Agreement dated as of November 21, 2016, by and among MRMI, the Borrower and the IDA and that certain Omnibus Amendment to Project Documents, dated as of January 19, 2017, between the Borrower and the IDA, (b) that certain Lease to Agency dated as of December 22, 2016, between Empire Sub I and the IDA, as amended by that certain Omnibus Amendment to Project Documents, dated as of January 19, 2017, between Empire Sub I and the IDA, and (c) any other similar lease agreement entered into between Empire Sub II and the IDA with respect to the Entertainment Village.

"IDA Leaseback Agreement" shall mean (a) that certain Amended and Restated Leaseback to Company dated as of October 1, 2015, among the Borrower, MRMI and the IDA, as assigned and amended by that certain Omnibus Assignment and Assumption Agreement dated as of November 21, 2016, by and among MRMI, the Borrower and the IDA and that certain Omnibus Amendment to Project Documents, dated as of January 19, 2017, between the Borrower and the

IDA, (b) that certain Leaseback to Company dated as of December 22, 2016, between Empire Sub I and the IDA, as amended by that certain Omnibus Amendment to Project Documents, dated as of January 19, 2017, between Empire Sub I and the IDA, and (c) any other similar leaseback agreement entered into between Empire Sub II and the IDA with respect to the Entertainment Village.

"Impacted Interest Period" shall have the meaning given in the definition of "LIBO Rate".

"Increased-Cost Lender" shall have the meaning given in Section 2.22.

"Indebtedness" shall mean, with respect to any Person, without duplication, (a) all indebtedness for borrowed money; (b) all Capital Lease Obligations; (c) notes payable and drafts accepted representing extensions of credit whether or not representing obligations for borrowed money; (d) any obligation owed for all or any part of the deferred purchase price of property or services (excluding any such obligations incurred under ERISA and such obligations with respect to trade payables and accruals incurred in the ordinary course of business); (e) all indebtedness secured by any Lien on any property or asset owned or held by that Person regardless of whether the indebtedness secured thereby shall have been assumed by that Person or is nonrecourse to the credit of that Person (provided, that if the indebtedness secured thereby has not been assumed or is non-recourse, the amount of such indebtedness included for the purposes of this definition will be the amount equal to the lesser of the fair market value of such property and the amount of the indebtedness secured); (f) the face amount of any acceptance, letter of credit or similar facility issued for the account of that Person or as to which that Person is otherwise liable for reimbursement of drawings; (g) all obligations of such Person, contingent or otherwise, with respect to the redemption, repayment or other repurchase of Disqualified Capital Stock (excluding accrued dividends that have not increased the liquidation preference of such Disqualified Capital Stock); (h) the direct or indirect guaranty, endorsement (other than for collection or deposit in the ordinary course of business), co-making, discounting with recourse or sale with recourse by such Person of the indebtedness of another (other than in the case of any Loan Party, indebtedness of any other Loan Party); (i) all indebtedness created or arising under any conditional sale or other title retention agreement with respect to Property acquired by such Person (even though the rights and remedies of the seller or lender under such agreement in the event of default are limited to repossession of such Property (provided, that if the indebtedness is non-recourse, the amount of such indebtedness included for the purposes of this definition will be the amount equal to the lesser of the fair market value of such Property and the amount of such indebtedness)); (j) all obligations of such Person in respect of any Hedging Agreement; and (k) any Guarantee of such Person in respect of obligations of the kind referred to in clauses (a) through (j) above. The Indebtedness of any Person shall include the Indebtedness of any other Person (including any partnership in which such Person is a general partner) to the extent such Person is liable therefor as a result of such Person's ownership interest in, or other relationship with, such other Person, except to the extent the terms of such Indebtedness provide that such Person is not liable therefor. For purposes of calculating Indebtedness hereunder at any time, the amount of Indebtedness of the type referred to in clause (j) above of any Person shall be equal to the payment due thereunder (giving effect to any netting agreements), if any, by such Person if such Indebtedness were terminated on such date. Additionally, (I) the Borrower's or any other Loan Party's obligations under the IDA Documents, (II) the Borrower's or any other Loan

Party's obligations under the Development Documents, and (III) any deferred obligations owing to the Gaming Authorities (in the case of this clause (III), so long as such deferred obligations do not constitute indebtedness for borrowed money) shall, in each case, not be considered Indebtedness hereunder. Additionally, Indebtedness shall not include (i) any surety bonds for claims underlying mechanics liens and any reimbursement obligations with respect thereto so long as such reimbursement obligations are not then due, or are promptly paid when due, (ii) any indebtedness that has been either satisfied or discharged or defeased through covenant defeasance or legal defeasance, (iii) prepaid or deferred revenue arising in the ordinary course of business, (iv) purchase price holdbacks arising in the ordinary course of business in respect of a portion of the purchase prices of an asset to satisfy unperformed obligations of the seller of such asset and (v) earn-out obligations until such obligations become a liability on the balance sheet of such person in accordance with GAAP.

"Indemnified Taxes" shall mean (i) Taxes imposed on or with respect to any payment made or due under any Loan Document other than Excluded Taxes and (ii) Other Taxes.

"Indemnitee" shall have the meaning given in Section 9.05(b).

"Information" shall have the meaning given in Section 9.16.

"Installment" shall have the meaning given in Section 2.11(a).

"Installment Date" shall mean, with respect to any Loan, the last Business Day of each March, June, September and December commencing on the first such date to occur that is the last day of the first full Fiscal Quarter following the Casino Opening Date, until (a) in the case of Term A Loans, the Term A Loan Maturity Date, and on the Term A Loan Maturity Date and (b) in the case of Term B Loans, the Term B Loan Maturity Date, and on the Term B Loan Maturity Date.

"Insurance Advisor" shall mean Harbor Insurance Group, or any other Person designated from time to time by the Administrative Agent in its sole discretion, to serve as the Insurance Advisor under the Loan Documents.

"Intellectual Property" shall have the meaning set forth in the Pledge and Security Agreement.

"Intellectual Property Collateral" shall mean Intellectual Property constituting Collateral in accordance with the Security Documents.

"Intellectual Property Security Agreements" shall mean each notice of grant of security interest in, or security agreement with respect to, intellectual property executed from time to time by any Loan Party in favor of the Collateral Agent for the benefit of the Secured Parties in accordance with the Pledge and Security Agreement in order to grant Liens to the Collateral Agent for the benefit of the Secured Parties over Intellectual Property to secure all or a portion of the Obligations.

"Intercreditor Agreement" shall mean an Intercreditor Agreement, substantially in the form of Exhibit C-8, among each Loan Party, the Equity Pledgor, the Collateral Agent and the Revolving Collateral Agent.

"Interest Coverage Ratio" shall mean, on any date, the ratio of (a) Consolidated Adjusted EBITDA for the period of four consecutive Fiscal Quarters most recently ended on or prior to such date (subject to such adjustments as are specified in Section 6.08(a)) to (b) Consolidated Cash Interest Expense for such period (subject to such adjustments as are specified in Section 6.08(a)); provided, however, that interest expense (if any) associated with the IDA Documents shall not be included for purposes of calculating Consolidated Cash Interest Expense.

"Interest Payment Date" shall mean (a) with respect to any ABR Loan, the last Business Day of each March, June, September and December and (b) with respect to any LIBOR Loan, the last day of the Interest Period applicable to such LIBOR Loan and, in the case of a LIBOR Loan with an Interest Period of more than three months' duration, each day that would have been an Interest Payment Date had successive Interest Periods of three months' duration been applicable to such LIBOR Loan. For the avoidance of doubt, no Interest Payment Date shall occur less frequently than every three months.

"Interest Period" shall mean, in connection with a LIBOR Loan, an interest period of one, two, three or six months (or, if agreed by all relevant Lenders, twelve months), as selected by the Borrower in the applicable Funding Notice or Conversion/Continuation Notice, (x) initially, commencing on the Credit Date or Conversion/Continuation Date thereof, as the case may be, and (y) thereafter, commencing on the day on which the immediately preceding Interest Period expires; provided, (a) if an Interest Period would otherwise expire on a day that is not a Business Day, such Interest Period shall expire on the next succeeding Business Day unless no further Business Day occurs in such month, in which case such Interest Period shall expire on the immediately preceding Business Day; (b) any Interest Period that begins on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the calendar month at the end of such Interest Period) shall, subject to clause (c) of this definition, end on the last Business Day of a calendar month; and (c) no Interest Period with respect to any portion of any Loans shall extend beyond the Term A Loan Maturity Date or the Term B Loan Maturity Date, as applicable.

"Interest Rate Determination Date" shall mean, with respect to any Interest Period, the date that is two Business Days prior to the first day of such Interest Period.

"Interest Reserve Account" shall mean the "Building Loan Interest Reserve Account" (as defined in the Building Loan Disbursement Agreement).

"Interpolated Rate" shall mean, at any time, for any Interest Period, the rate per annum determined by the Administrative Agent (which determination shall be conclusive and binding absent manifest error) to be equal to the rate that results from interpolating on a linear basis between: (a) the LIBO Screen Rate for the longest period (for which the LIBO Screen Rate is available for Dollars) that is shorter than the Impacted Interest Period and (b) the LIBO Screen Rate for the shortest period (for which the LIBO Screen Rate is available for Dollars) that exceeds the Impacted Interest Period, in each case, at such time.

"Investment" shall mean (a) any direct or indirect purchase or other acquisition by the Borrower or any other Loan Party of, or of a beneficial interest in, any of the Securities of any other Person; (b) any direct or indirect purchase or other acquisition for value, by any Loan Party from any Person, of any Capital Stock in such Person; (c) any direct or indirect loan, advance or capital contribution by the Borrower or any other Loan Party to any other Person, including all Indebtedness and accounts receivable from that other Person that are not current assets or did not arise from sales to that other Person in the ordinary course of business; and (d) any direct or indirect purchase of all or substantially all of the assets constituting the business of a division, branch or other unit of operations from any Person. The amount of any Investment shall be the original cost of such Investment plus the cost of all additions thereto, without any adjustments for increases or decreases in value, or write-ups, write-downs or write-offs with respect to such Investment less all returns of principal or equity therein or repayments thereof.

"Investment Account" shall mean each of the accounts established under the Collateral Account Control Agreement, the Control Agreements and each other Investment Account (as defined in the Pledge and Security Agreement).

"IRS" shall mean the United States Internal Revenue Service.

"Joint Venture" shall mean a joint venture, partnership or other similar arrangement, whether in corporate, partnership or other legal form, that is neither a Subsidiary nor an Unrestricted Subsidiary of the Borrower.

"Lead Arranger" shall mean each of Credit Suisse Securities (USA) LLC, Fifth Third Bank and Nomura Securities International, Inc., individually and collectively, as the context may require, in its capacity as lead arranger (with respect to Credit Suisse Securities (USA) LLC and Fifth Third Bank only) and book runner with respect to the Facility and its permitted successors and assigns in such capacity.

"Legal Requirements" shall mean, as to any Person, the Governing Documents of such Person, and any law, treaty, rule or regulation or determination of an arbitrator or a court or other Governmental Authority, in each case applicable to or binding upon such Person or any of its Real Property (including Gaming Laws) or personal property or to which such Person or any of its property of any nature is subject.

"Lender Addendum" shall mean, with respect to any initial Lender, a Lender Addendum substantially in the form of Exhibit H to be executed and delivered by such Lender on the date of this Agreement.

"Lenders" shall have the meaning given in the preamble to this Agreement; provided that the term "Lenders" shall include any Person that delivers a Lender Addendum or any Person that has become a party hereto pursuant to an Assignment and Acceptance (in each case other than any such Person that has ceased to be a party hereto pursuant to an Assignment and Acceptance).

"LIBOR", when used in reference to any Loan or Borrowing, refers to whether such Loan or Loans comprising such Borrowing are bearing interest at a rate determined by reference to the Adjusted LIBO Rate.

"LIBO Rate" shall mean, with respect to any LIBOR Loan for any Interest Period, the rate per annum determined by the Administrative Agent, at approximately 11:00 a.m. (London time) on the date which is two (2) Business Days prior to the commencement of the relevant Interest Period by reference to the London interbank offered rate administered by ICE Benchmark Administration Limited (or any other Person that takes over the administration of such rate for Dollars) for deposits in Dollars for a period equal to such Interest Period as displayed on pages LIBOR01 or LIBOR02 of the Reuters screen that displays such rate (or, in the event such rate does not appear on a Reuters page of screen, on any successor or substitute page on such screen that displays such rate, or on the appropriate page of such other information service that publishes such rate from time to time which has been nominated by ICE Benchmark Administration Limited as an authorized information vendor for the purpose of displaying such rates as selected by the Administrative Agent in its reasonable discretion) (in each case, the "LIBO Screen Rate"); provided that, to the extent that an interest rate is not ascertainable pursuant to the foregoing provision of this definition for a particular Interest Period (an "Impacted Interest Period"), "LIBO Rate" shall be the Interpolated Rate for such Interest Period; provided further that, if the LIBO Rate shall be less than zero, the LIBO Rate shall be deemed to be zero for purposes of this Agreement (other than pursuant to a Hedging Agreement, to the extent applicable, in which case this proviso shall be disregarded).

"LIBO Screen Rate" shall have the meaning given in the definition of "LIBO Rate".

"License Revocation" shall mean (a) the revocation, failure to renew or suspension of (x) any Gaming License of the Borrower or any other Loan Party or (y) the Gaming License of any other Person (other than a Secured Party) required to hold a Gaming License as a condition to any Gaming License of the Borrower or any other Loan Party if, in the case of preceding clause (x) or (y), such revocation, failure to renew or suspension could reasonably be expected to have a Material Adverse Effect (provided that nothing in this clause (a) shall be deemed a License Revocation to the extent and only for so long as any such revocation, failure to renew or suspension is subject to an appeal or proceedings for review in respect of which there shall be secured a subsisting stay of execution on such revocation, failure to renew or suspension pending such appeal or proceedings and the Loan Parties are permitted to continue to conduct their operations, taken as a whole and in all material respects, in the ordinary course of business (without any further material restrictions) during the pendency of any such appeal or proceeding for review) or (b) the appointment of a receiver, trustee or similar official by the Gaming Authorities with respect to any Loan Party or the Project.

"Lien" shall mean (i) any lien, mortgage, pledge, collateral assignment, security interest, charge or encumbrance of any kind (including any agreement to give any of the foregoing (unless such agreement is entered into in connection with the full refinancing of the Obligations under this Agreement and the obligation to give any of the foregoing takes effect substantially concurrently with or after the payment in full of the Obligations)), any conditional sale or other title

retention agreement (and any lease in the nature thereof) and any option, trust or other preferential arrangement having the practical effect of any of the foregoing and (ii) in the case of Securities, any purchase option, call or similar right of a third party with respect to such Securities; provided, however, in no event shall (i) restrictions under Gaming Laws prohibiting the grant of a security interest in any Gaming License or (ii) an operating lease or an agreement to sell constitute a Lien.

"Lien Law" shall mean the Lien Law of the State of New York.

"Liquidated Damages" shall mean any proceeds, liquidated damages or indemnity amounts paid pursuant to any obligation, default or breach under the Project Documents (net of costs, fees and expenses incurred by a Loan Party pursuant to arm's length transactions in connection with adjustment or settlement thereof and taxes paid with respect thereto). For purposes of this definition, amounts paid under so called "liquidated damages" insurance policies shall be deemed to be "Liquidated Damages".

"Loan" shall mean a Term A Loan or a Term B Loan, as applicable.

"Loan Documents" shall mean this Agreement, each Subordination Agreement (if any), the Disbursement Agreements, the Equity Pledge Agreement, the other Security Documents, the Subsidiary Guaranty (if and when executed), the Completion Guaranty, the Intercreditor Agreement, the Environmental Indemnity Agreements, the Notes, the Fee Letter (solely for purposes of Section 7.01), the Subordinated Intercompany Note (if and when executed) and any other document or certificate executed by any Company or any other provider of credit support in respect of the Obligations, for the benefit of any Agent, any Lender or any other Secured Party in connection with this Agreement or any other Loan Document. For the avoidance of doubt, Hedging Agreements and Cash Management Agreements do not constitute Loan Documents.

"Loan Parties" shall mean the Borrower and each Subsidiary Guarantor.

"Loan Proceeds Account" shall mean the "Building Loan Proceeds Account" (as defined in the Building Loan Disbursement Agreement).

"Make-Whole Premium" shall mean, in the case of any Pre-Thirtieth Month Repayment of Term B Loans, the excess of:

(a) the present value at such Pre-Thirtieth Month Repayment Date of (i) the Repayment Principal as if paid on the Thirtieth Month (including the repayment premium of 2.00% required pursuant to Section 2.12(c)) plus (ii) all required remaining interest payments which would have been payable on the applicable Repayment Principal from the applicable Pre-Thirtieth Month Repayment Date to the Thirtieth Month as if such Pre-Thirtieth Month Repayment had not been made, calculated using the three-month Adjusted LIBO Rate in effect on the third Business Day prior to such Pre-Thirtieth Month Repayment Date plus the then effective Applicable Margin, and with such present value computed in accordance with accepted financial practice using a discount rate equal to the Treasury Rate as of the applicable Pre-Thirtieth Month Repayment Date plus 0.50%; over

(b) such Repayment Principal;

provided, however, in no event shall the Make-Whole Premium be less than $0.

"Margin Stock" shall have the meaning given in Regulation U.

"Master Association" shall mean Concord Resorts Master Association, LLC, a New York limited liability company.

"Material Adverse Effect" shall mean any change, occurrence, event, circumstance or development that has had, or could reasonably be expected to have, a material adverse effect on (a) the business, property, financial condition, operation or performance of the Loan Parties and the Project, taken as a whole, (b) the ability of the applicable Loan Parties to develop, construct or operate the Project in accordance with the Key Construction and Design Contracts (as defined in the Building Loan Disbursement Agreement), the Key Contracts (as defined in the Project Disbursement Agreement), the Gaming Licenses, the Gaming License Conditions and the Gaming Laws, (c) the validity or enforceability of any of the Loan Documents or the rights and remedies of the Lead Arranger, the Agents, the Collateral Agent or the other Secured Parties thereunder, or (d) the ability of the Loan Parties (taken as a whole) or the Companies (taken as a whole) to perform their respective Obligations under the Loan Documents to which it is a party. Notwithstanding the foregoing, the granting of a gaming license by any gaming authority or the passage of any legislation approving the granting of such license, in each case, after the Closing Date to any Person in the States of New York, New Jersey or Connecticut or the opening of any other casino or gaming facility in such states shall not be or be deemed to cause a Material Adverse Effect, and shall not be taken into consideration for purposes of determining whether a Material Adverse Effect has occurred.

"Material Contract" shall mean (a) the General Contract, (b) the Architectural Services Agreement, (c) the EV Contract, (d) the IDA Documents, (e) the Gaming License Conditions, (f) the Development Documents or (g) any other contract or other arrangement to which a Loan Party is a party (other than the Loan Documents or contracts for the incurrence of Indebtedness), for which breach, nonperformance, cancellation or failure to renew could reasonably be expected to have a Material Adverse Effect.

"Material Indebtedness" shall mean any Indebtedness (other than the Loans and Indebtedness permitted pursuant to Section 6.01(b)), or obligations in respect of one or more Hedging Agreements, of any one or more of the Loan Parties in an aggregate principal amount (or, with respect to Revolving Obligations, the aggregate amount of all Revolving Commitments and Revolving Loans) exceeding $10,000,000. For purposes of determining Material Indebtedness, the "principal amount" of the obligations of such Persons in respect of any Hedging Agreement at any time shall be the maximum aggregate amount (giving effect to any netting agreements) that the applicable Person would be required to pay if such Hedging Agreement were terminated at such time.

"Maximum Rate" shall have the meaning given in Section 9.09.

"Moody's" shall mean Moody's Investors Service, Inc., a Delaware corporation, or any successor thereof.

"Mortgaged Properties" shall mean, initially, each parcel of real property and the improvements thereto owned or leased by a Loan Party and specified on Schedule 1.01(a), together with each other parcel of real property and improvements thereon with respect to which a Mortgage is granted pursuant to Section 5.11, 5.12 or 5.14. Notwithstanding the foregoing, "Mortgaged Properties" shall not include (i) any Excluded Leased Real Property and (ii) any parcel of real property that has been released from, and is not subject to, the lien of a Mortgage.

"Mortgages" shall mean (a) the Building Loan Mortgage, Leasehold Mortgage, Assignment of Rents and Leases, Security Agreement and Fixture Filing, substantially in the form of Exhibit C-5, effective as of the date hereof, executed and delivered by the Borrower, Empire Sub I and the IDA in favor of the Collateral Agent for the benefit of the Secured Parties, (b) the Building Loan Spreader Agreement, effective as of the date hereof, executed and delivered by the Borrower, Empire Sub I and Empire Sub II in favor of the Collateral Agent for the benefit of the Secured Parties and (c) each other building fee or building leasehold mortgages or deeds of trust, assignments of leases and rents, spreading agreements and other security documents granting a Lien on, or spreading a Lien on, any Real Property to the Collateral Agent for the benefit of the Secured Parties to secure the Obligations, each substantially in the form of Exhibit C-5 with such changes as shall be advisable under the law of the jurisdiction in which such Mortgage is to be recorded and as are reasonably satisfactory to the Administrative Agent, or otherwise in form and substance reasonably satisfactory to the Administrative Agent. Each of the above shall be referred to herein individually as a "Mortgage".

"MRMI" shall mean Monticello Raceway Management, Inc., a New York corporation.

"Multiemployer Plan" shall mean a multiemployer plan as defined in Section 3(37) or 4001(a)(3) of ERISA to which any Loan Party or any ERISA Affiliate (other than one considered an ERISA Affiliate only pursuant to subsection (m) or (o) of Code Section 414) is making or accruing an obligation to make contributions, or has within any of the preceding six plan years made or accrued an obligation to make contributions.

"Narrative Report" shall mean, with respect to the financial statements for which such narrative report is required, a narrative report describing the operations of the Borrower and its Subsidiaries in the form prepared for presentation to senior management thereof for the applicable Fiscal Quarter or Fiscal Year and for the period from the beginning of the then current Fiscal Year to the end of such period to which such financial statements relate.

"Net Cash Proceeds" shall mean:

(a) with respect to any Asset Sale made pursuant to Section 6.09(c) or in violation of Section 6.09 or any Recovery Event, the proceeds thereof in the form of Cash and Cash Equivalents (including any such proceeds subsequently received (as and when received) in respect of non-Cash

consideration initially received), net of, except to the extent in each case payable to any Affiliate of the Borrower:

(i) selling expenses (including reasonable and customary closing apportionments in favor of the applicable purchaser, broker's fees or commissions, legal fees, transfer and similar taxes incurred by the Borrower or any other Loan Party in connection therewith and the Borrower's good faith estimate of taxes paid or payable by the Borrower or any other Loan Party, or distributions made or expected to be made within the following twelve months pursuant to Section 6.05(b), in connection with such sale, after taking into account any available tax credits or deductions and any tax sharing arrangements, in each case to the extent attributable to such sale);

(ii) amounts provided as a reserve, in accordance with GAAP, against any liabilities under any indemnification obligations or purchase price adjustment associated with such Asset Sale (provided that, to the extent and at the time any such amounts are released from such reserve, such amounts shall constitute Net Cash Proceeds);

(iii) the principal amount, premium or penalty, if any, interest and other amounts on any Indebtedness (or amounts required by the terms of such Indebtedness to be otherwise reinvested in other assets of each Loan Party to the extent so invested)(other than the Obligations and the Revolving Obligations) which is secured by the asset sold in such Asset Sale or subject to such Recovery Event and (in either case) which is required to be repaid with such proceeds (other than any such Indebtedness assumed by the purchaser of such asset);

(iv) reserves for withdrawal liability or severance estimated by the Borrower to be payable arising from such Asset Sale;

(v) amounts required to be paid to any Person (other than the Borrower and the other Loan Parties) owning a beneficial interest in the subject asset; and

(vi) amounts paid in connection with securing any settlement of or payment in respect of any property or casualty insurance claim in case of a Recovery Event, including any related Taxes paid or payable or distributions made or expected to be made within the following twelve months pursuant to Section 6.05(b) in connection with such Recovery Event;

provided, however, that, if:

(A) the Borrower shall deliver a certificate of a Financial Officer or other authorized officer of the Borrower to the Administrative Agent within five (5) Business Days of receipt thereof setting forth:

(I) in the case of an Asset Sale, the Borrower's intent to reinvest such proceeds in assets of a kind then used or usable in the business of the Borrower and the other Loan Parties within 365 days of receipt of such proceeds;

(II) in the case of a Recovery Event:

(x) the Borrower's intent to apply such proceeds (the "Restoration Proceeds") to the repair, or restoration or replacement of, or remedy of such breach with respect to, the property subject to such Recovery Event within 365 days of receipt of such Restoration Proceeds or to the reimbursement of Consolidated Capital Expenditures made by a Loan Party with respect to any such repair or restoration within 90 days prior to such receipt (or, if such Restoration Proceeds relate to an event prior to the Completion Date and the application of such proceeds to Project Costs is required to achieve Completion, that such funds will be applied prior to the achievement of Final Completion (as defined in the Disbursement Agreements) in accordance with the terms of the Disbursement Agreements); and

(y) that if such Restoration Proceeds relate to an event after the Completion Date (or, if prior to the Completion Date, the relevant property was not part of the Project), the repair or restoration of, or remedy of such breach with respect to, the property subject to such Recovery Event to a condition substantially similar to the condition of such property immediately prior to the event or events to which such Recovery Event relates is technically and economically feasible within such 365-day period and that a sufficient amount of funds is or will be available to the relevant Loan Party to make such repairs and restorations, or to remedy such breach; and

(B) in the case of an Asset Sale, no Default or Event of Default shall have occurred and shall be continuing at the time of such certificate or at the proposed time of the application of such proceeds, and

(C) in the case of a Recovery Event, no Event of Default shall have occurred and shall be continuing at the time of such certificate or at the proposed time of the application of such proceeds;

then (I) in the case of an Asset Sale, such proceeds shall not constitute Net Cash Proceeds except to the extent not so reinvested at the end of such 365-day period (at which time such proceeds shall be deemed Net Cash Proceeds) and (II) in the case of a Recovery Event, such Restoration Proceeds shall not constitute Net Cash Proceeds except to the extent not so used at the end of such 365-day period (or if the Recovery Event occurs with respect to an event prior to the Completion Date and the application of such proceeds to Project Costs is required to achieve Completion, then to the extent not used prior to the achievement of Final Completion at which time, subject to the terms of the Disbursement Agreements, such Restoration Proceeds shall be deemed to be Net Cash Proceeds); and

(b) with respect to any issuance or disposition of Indebtedness, the Cash proceeds thereof, net of all taxes or distributions pursuant to Section 6.05(b) and reasonable and customary fees, commissions, costs and other expenses incurred by the Borrower or any other Loan Party, in each case, in connection therewith.

Notwithstanding the foregoing, all proceeds of (i) so-called "business interruption" policies and (ii) Specified FF&E Collateral shall not be Net Cash Proceeds.

"Non-Consenting Lender" shall have the meaning given in Section 2.22.

"Non-Defaulting Lender" shall mean, at any time, each Lender that is not a Defaulting Lender at such time.

"Note" shall mean a promissory note in the form of Exhibit A or Exhibit B, as applicable.

"Notice of Lending" shall mean a notice of lending as described in Section 73 of the Lien Law, in form and substance reasonably satisfactory to the Administrative Agent.

"Obligations" shall mean all obligations of every nature of any Company from time to time owed to the Agents, the Lead Arranger (including former Agents or Lead Arranger), the Lenders or the other Secured Parties or any of them under any Loan Document, Specified Hedging Agreement or Specified Cash Management Agreement, whether for principal, interest (including interest which, but for the filing of a petition in bankruptcy with respect to any Company would have accrued on any Obligation, whether or not a claim is allowed against any Company for such interest in the related bankruptcy proceeding), payments for early termination of Specified Hedging Agreements and Specified Cash Management Agreements, Fees, expenses, indemnification or otherwise, and shall include (x) all interest accrued or accruing (or which would, absent commencement of a proceeding under any Debtor Relief Law, accrue) in accordance with the rate specified in the relevant Loan Document and (y) all fees, costs and charges incurred in connection with the Loan Documents and provided for thereunder, in the case of each of clause (x) and clause (y) whether before or after commencement of a proceeding under any Debtor Relief Law, and irrespective of whether any claim for such interest, fees, costs or charges is allowed as a claim in a proceeding under any Debtor Relief Law.

"On-Site Cash" shall mean amounts held in Cash on-site at the Project (including cage cash) in connection with the ordinary course of operations thereof.

"Other Connection Taxes" shall mean, with respect to any Recipient, Taxes imposed as a result of a present or former connection between such Recipient and the jurisdiction imposing such Tax (other than connections arising from such Recipient having executed, delivered, become a party to, performed its obligations under, received payments under, received or perfected a security interest under, engaged in any other transaction pursuant to or enforced any Loan Document, or sold or assigned an interest in any Loan, Commitment or Loan Document).

"Other Taxes" shall mean any and all present or future stamp, court or documentary, intangible, recording, filing or similar taxes or any other excise or property taxes, charges or similar levies (including interest, fines, penalties and additions to tax) arising from any payment made or the receipt or perfection of a security interest under any Loan Document or from the execution, delivery, performance or enforcement of, or otherwise with respect to, any Loan Document, except, in each case, any such taxes, charges or similar levies (including interest, fines, penalties and additions to tax) that are Other Connection Taxes imposed with respect to an assignment (other than an assignment pursuant to Section 2.20 or Section 2.22).

"Participant" shall have the meaning given in Section 9.04(b).

"Participant Register" shall have the meaning given in Section 9.04(b).

"Pass Through Entity" shall mean any of (a) a grantor trust for federal and state income tax purposes or (b) an entity treated as a partnership, S corporation or a disregarded entity for U.S. federal and applicable state income tax purposes.

"Patriot Act" shall have the meaning given in Section 3.29.

"PBGC" shall mean the Pension Benefit Guaranty Corporation established pursuant to Subtitle A of Title IV of ERISA and any successor entity performing similar functions.

"Permits" shall mean any and all franchises, licenses (including Gaming Licenses), certificates of occupancy, leases, permits, approvals, notifications, certifications, registrations, authorizations, exemptions, qualifications, easements, rights of way, Liens and other rights, privileges and approvals required under any Legal Requirement (including Environmental Laws).

"Permitted Equity Contributions" shall mean, on any date, the cumulative amount of Cash and Cash Equivalents received on or prior to such date from any equity issuance by, or capital contribution to, the Borrower (other than Disqualified Capital Stock, Specified Equity Contributions, payments made under the Completion Guaranty, amounts required to be contributed pursuant to either Disbursement Agreement, amounts utilized pursuant to clause (c) of the definition of Available Amount, Required Equity Contributions, amounts applied to Project Costs and other amounts previously applied for purposes other than use in the Permitted Equity Contribution Amount), which amounts the Borrower shall have within three (3) Business Days of receipt thereof designated to the Administrative Agent in writing as "Permitted Equity Contributions".

"Permitted Equity Contribution Amount" shall mean, on any date, an amount equal to (a) the aggregate cumulative amount of Permitted Equity Contributions; *minus* (b) the aggregate amount of any (i) Investments made pursuant to Section 6.07(q), and (ii) Consolidated Capital Expenditures made with Permitted Equity Contributions pursuant to Section 6.08(c)(i), in each case, made since the Full Opening Date and on or prior to such date.

"Permitted Holders" shall mean (i) Mr. Tan Sri Lim Kok Thay and any member of the Family Group of Mr. Tan Sri Lim Kok Thay, (ii) Kien Huat Realty III Limited, (iii) Genting Berhad, (iv) Genting Malaysia Berhad, and (v) Genting Hong Kong Limited.

"Permitted Liens" shall mean each of the Liens permitted pursuant to Section 6.02.

"Permitted Refinancing Indebtedness" shall mean Indebtedness issued or incurred (including by means of the extension or renewal of existing Indebtedness) to refinance, refund, extend, renew or replace existing Indebtedness ("Refinanced Indebtedness"); provided that (a) the principal amount of such refinancing, refunding, extending, renewing or replacing Indebtedness is not greater than the principal amount of such Refinanced Indebtedness plus the amount of any premiums or penalties and accrued and unpaid interest paid thereon and original issue discount on such refinancing, refunding, extending, renewing or replacing Indebtedness and fees and expenses, in each case associated with such refinancing, refunding, extension, renewal or replacement,

(b) except in the case of a refinancing of Indebtedness under Section 6.01(p), such refinancing, refunding, extending, renewing or replacing Indebtedness has a final maturity that is no sooner than, and in the case of term Indebtedness a Weighted Average Life to Maturity that is no shorter than, such Refinanced Indebtedness, (c) if such Refinanced Indebtedness or any Guarantees thereof are subordinated to the Obligations, such refinancing, refunding, extending, renewing or replacing Indebtedness and any Guarantees thereof remain, in the reasonable good faith determination of the Borrower, so subordinated on terms no less favorable to the Lenders, (d) the obligors in respect of such Refinanced Indebtedness immediately prior to such refinancing, refunding, extending, renewing or replacing are the only obligors on such refinancing, refunding extending, renewing or replacing Indebtedness, (e) except in the cash of a refinancing of Indebtedness under Section 6.01(p), such refinancing, refunding, extending, renewing or replacing Indebtedness does not, in the reasonable good faith determination of the Borrower, contain covenants, terms, conditions or events of default which, when taken as a whole, are materially adverse and/or materially more burdensome to the Borrower or the applicable Loan Party and the Lenders in comparison to the covenants, terms, conditions or events of default, taken as a whole, in respect of such Refinanced Indebtedness (other than, in each case, the economic terms thereof (including the interest rate)); provided that a certificate of the Borrower delivered to the Administrative Agent at least three Business Days prior to the incurrence of such Indebtedness, together with a reasonably detailed description of the material covenants, terms, conditions and events of default of such Indebtedness or drafts of the documentation relating thereto, stating that the Borrower has reasonably determined in good faith that such covenants, terms, conditions and events of default satisfy the foregoing requirement shall be conclusive evidence that such covenants and defaults satisfy the foregoing requirement unless the Administrative Agent notifies the Borrower within such three Business Day period that it disagrees with such determination (including a reasonably detailed description of the basis upon which it disagrees) and (f) in the case of a refinancing of Indebtedness under Section 6.01(p), (i) such refinancing, refunding, extending, renewing or replacing Indebtedness shall have a maturity date no later than the latest Scheduled Maturity Date hereunder, (ii) such refinancing, refunding, extending, renewing or replacing Indebtedness has covenant, default and remedy provisions and other terms and conditions that are not materially more restrictive on the Loan Parties (as reasonably determined by the Borrower) than the covenant, default and remedy provisions and other terms and conditions of this Agreement (and in no event shall the financial covenants thereunder be more restrictive than the financial covenants in this Agreement), provided that a certificate of the Borrower delivered to the Administrative Agent at least three Business Days prior to the incurrence of such Indebtedness, together with a reasonably detailed description of the material covenants, terms, conditions and events of default of such Indebtedness or drafts of the documentation relating thereto, stating that the Borrower has reasonably determined in good faith that such covenants, terms, conditions and events of default satisfy the foregoing requirement shall be conclusive evidence that such covenants and defaults satisfy the foregoing requirement unless the Administrative Agent notifies the Borrower within such three Business Day period that it disagrees with such determination (including a reasonably detailed description of the basis upon which it disagrees), and (iii) the relevant holders (or agent or other representative of such holders) of such refinancing, refunding, extending, renewing or replacing Indebtedness becomes party to the Intercreditor Agreement, if and to the extent such Permitted Refinancing Indebtedness is secured.

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

"Plans and Specifications" shall have the meaning given in the Building Loan Disbursement Agreement.

"Pledge and Security Agreement" shall mean the Pledge and Security Agreement, substantially in the form of Exhibit C-2, dated as of the date hereof, among each Loan Party and the Collateral Agent.

"Pledged Collateral" shall mean the "Pledged Equity Interests" as defined in the Pledge and Security Agreement, and the "Pledged Collateral", as defined in the Equity Pledge Agreement.

"Pre-Thirtieth Month Repayment" shall mean (a) any prepayment or repayment of Term B Loans in whole or in part (whether pursuant to Section 2.12(a), Section 2.13 or otherwise but excluding only repayments made pursuant to Section 2.11(b), Section 2.13(a)(ii), Section 2.13(c), Section 2.13(d)), or (b) the acceleration of the then outstanding principal amount of the Term B Loans in accordance with the Loan Documents, in each case prior to the Thirtieth Month.

"Pre-Thirtieth Month Repayment Date" shall mean (a) with respect to any Pre-Thirtieth Month Repayment contemplated by clause (a) of the definition thereof, the date on which such Pre-Thirtieth Month Repayment is to be made and (b) with respect to any Pre-Thirtieth Month Repayment contemplated by clause (b) of the definition thereof, the date on which the then outstanding principal amount of the Term B Loans is accelerated in accordance with the Loan Documents.

"Presumed Tax Rate" shall mean the highest combined marginal federal, state and local income tax rate for the relevant taxable year of a corporation doing business in New York, taking into account the federal income tax deduction for such state and local income taxes). In determining the Presumed Tax Rate, the character of the items of income and gain comprising Taxable Income (e.g., ordinary income or long-term capital gain) and any applicable preferential tax rates shall be taken into account.

"Prime Rate" shall mean the rate of interest per annum determined from time to time by Credit Suisse AG as its prime rate in effect at its principal office in New York City and notified to the Borrower. The prime rate is a rate set by Credit Suisse AG based upon various factors including Credit Suisse AG's costs and desired return, general economic conditions and other factors, and is used as a reference point for pricing some loans, which may be priced at, above or below such rate. The Borrower acknowledges that Credit Suisse AG may, from time to time, make commercial loans or other loans at rates of interest at, above or below the Prime Rate.

"Principal Office" shall mean, for the Administrative Agent, the Administrative Agent's "Principal Office" as set forth on Appendix B, or such other office as the Administrative

Agent may from time to time designate in writing to the Borrower, the Administrative Agent and each Lender.

"Proceedings" shall mean any action, suit, proceeding (whether administrative, judicial or otherwise), governmental investigation or arbitration against any Company or affecting any Property of such Person.

"Project" shall have the meaning given in the recitals to this Agreement.

"Project Budget" shall have the meaning given in Section 4.01(w).

"Project Costs" shall mean the "Building Loan Costs" (as defined in the Building Loan Disbursement Agreement) and the "Project Costs" (as defined in the Project Disbursement Agreement) and shall include, for purposes of clarification, the payments of licensing fees to the Gaming Authorities in an aggregate amount not to exceed $51,000,000 for the issuance of, or application for, the Borrower's Gaming License; provided that, for the avoidance of doubt, in accordance with Section 3.13, the Loans shall not be used to fund Project Costs that do not constitute Building Loan Costs.

"Project Documents" shall have the meaning given in the Disbursement Agreements.

"Project Disbursement Agreement" shall mean the Project Disbursement Agreement substantially in the form of Exhibit L-2, dated as of the date hereof, among the Administrative Agent, the Collateral Agent, the Borrower and the Disbursement Agent.

"Project Schedule" shall have the meaning given in Section 4.01(x).

"Property" shall mean any right or interest in or to property of any kind whatsoever, whether real, personal or mixed and whether tangible or intangible, including Capital Stock.

"Pro Rata Share" shall mean:

(a) with respect to all payments, computations and other matters relating to a particular Class of Term A Loan Commitment of any Term A Lender, the percentage obtained by dividing (i) the Term A Loan Commitment of such Class held by that Term A Lender by (ii) the aggregate Term A Loan Commitments of such Class;

(b) with respect to all payments, computations and other matters relating to the Term A Loan of any Term A Lender, the percentage obtained by dividing (i) the Term A Loan Exposure of that Term A Lender by (ii) the aggregate Term A Loan Exposure of all Term A Lenders;

(c) with respect to all payments, computations and other matters relating to a particular Class of Term B Loan Commitment of any Term B Lender, the percentage obtained by dividing (i) the Term B Loan Commitment of such Class held by that Term B Lender by (ii) the aggregate Term B Loan Commitments of such Class; and

(d) with respect to all payments, computations and other matters relating to the Term B Loan of any Term B Lender, the percentage obtained by dividing (i) the Term B Loan Exposure of that Term B Lender by (ii) the aggregate Term B Loan Exposure of all Term B Lenders.

For all other purposes with respect to each Lender, "Pro Rata Share" shall mean the percentage obtained by dividing (A) an amount equal to the Aggregate Exposure of that Lender, by (B) an amount equal to the sum of the Aggregate Exposure of all Lenders.

"Purchase Option Agreement" shall mean that certain Purchase Option Agreement, dated as of December 28, 2015, by and among EPT Sub, EPR Sub, Adelaar Developer, and the Borrower, as amended by that certain First Amendment to Purchase Option Agreement, dated as of January 19, 2017, by and among EPT Sub, EPR Sub, Adelaar Developer, and the Borrower.

"Qualified Capital Stock" shall mean Capital Stock that is not Disqualified Capital Stock.

"Qualified ECP Guarantor" shall have the meaning given to such term in the Pledge and Security Agreement.

"Real Property" shall mean all Mortgaged Property and all other real property owned or leased from time to time by any Loan Party and, to the extent provided in, and solely for the purposes of, Section 3.17 and Section 5.09, any Unrestricted Subsidiary.

"Recipient" shall mean (a) the Administrative Agent and (b) any Lender as applicable.

"Recovery Event" shall mean any settlement of or payment in respect of any property or casualty insurance claim (other than a settlement in respect of business interruption insurance or other similar insurance proceeds covering the loss of revenues and extra expenses), any Liquidated Damages, or any taking under power of eminent domain or by condemnation or similar proceeding of or relating to any property or asset of the Borrower or any other Loan Party; provided that any such event or series of related events causing damage or destruction resulting in the payment of insurance proceeds (or Liquidated Damage payments or tax or other refunds, as applicable) in an amount, or a taking of property having value, not in excess of $1,000,000 in the aggregate for all such events in any Fiscal Year shall not be deemed a Recovery Event for purposes of this Agreement.

"Register" shall have the meaning given in Section 2.06(b).

"Regulation D" shall mean Regulation D of the Board as from time to time in effect and all offered rulings and interpretations thereunder and thereof.

"Regulation T" shall mean Regulation T of the Board as from time to time in effect and all official rulings and interpretations thereunder or thereof.

"Regulation U" shall mean Regulation U of the Board as from time to time in effect and all official rulings and interpretations thereunder or thereof.

"Regulation X" shall mean Regulation X of the Board as from time to time in effect and all official rulings and interpretations thereunder or thereof.

"Regulatory Cash Amount" shall mean the Borrower's good faith estimate of the amount of cash it needs to reserve from any payment pursuant to Section 2.13(c) in order to maintain at the Project an amount of cash necessary to be, and remain, in compliance with all applicable requirements under Gaming Laws (after taking into account cash available for such purpose) related to "cage cash" and other On-Site Cash.

"Related Parties" shall mean, with respect to any specified Person, such Person's Affiliates, successors and assigns and the respective partners, trustees, members, controlling persons, directors, officers, employees, agents and advisors of such Person and such Person's Affiliates, successors and assigns.

"Release" shall mean any release, spill, seepage, emission, leaking, pumping, injection, pouring, emptying, deposit, disposal, discharge, dispersal, dumping, escaping or leaching into or through the environment or within or upon any building, structure, facility or fixture.

"Relevant Four Fiscal Quarter Period" shall have the meaning given in Section 7.03.

"Repayment Principal" shall mean, in the case of any Term B Loans with respect to any Pre-Thirtieth Month Repayment, the amount of principal to be prepaid, repaid or accelerated in respect of such Pre-Thirtieth Month Repayment.

"Replacement Lender" shall have the meaning given in Section 2.22.

"Required Class Lenders" shall have the meaning given in Section 9.08(b)(v).

"Required Equity Contribution" shall mean equity contributions to the Borrower and the other Loan Parties in an aggregate amount not less than $67,000,000 in Cash (including the Closing Date Equity Contribution).

"Required Lenders" shall mean, at any time of determination, one or more Lenders (other than Defaulting Lenders) collectively having or holding Aggregate Exposure representing more than 50% of the Aggregate Exposure of all Lenders at such time. The Aggregate Exposure of any Defaulting Lender shall be disregarded in determining Required Lenders at any time. Notwithstanding the foregoing, to the same extent set forth in Section 9.04(h) or Section 9.04(k), the portion of a Lender's Aggregate Exposure, held or deemed held by any Affiliated Lender or Disqualified Institution shall be excluded for purposes of making a determination of Required Lenders.

"Required Prepayment Percentage" shall mean (a) in the case of any Asset Sale or Recovery Event, 100%; (b) in the case of any issuance or other incurrence of Indebtedness for borrowed money, 100%; and (c) in the case of any Consolidated Excess Cash Flow, (i) 75% or (ii) if on the last day of the most recently ended Fiscal Quarter the First Lien Leverage Ratio as of such last day is less than 2.75 to 1.00, 50%.

"Responsible Officer" of any Person shall mean any executive officer or Financial Officer of such Person and any other officer or similar official thereof responsible for the administration of the obligations of such Person in respect of this Agreement.

"Restoration Proceeds" shall have the meaning given in the definition of "Net Cash Proceeds".

"Restricted Junior Payment" shall mean (a) any dividend or other distribution, direct or indirect, on account of any shares of any class of equity (including Capital Stock and preferred equity) of the Borrower, now or hereafter outstanding, except a dividend payable solely in shares of that class of equity to the holders of that class; (b) any redemption, retirement, sinking fund or similar payment, purchase or other acquisition for value, direct or indirect, of any shares of any class of equity (including Capital Stock and preferred equity) of the Borrower, now or hereafter outstanding; (c) any payment made to retire, or to obtain the surrender of, any outstanding warrants, options or other rights to acquire shares of any class of equity (including Capital Stock and preferred equity) of the Borrower, now or hereafter outstanding; (d) advisory, management, consulting, oversight or similar fees payable to any Affiliate of any Loan Party (in each case other than to a Loan Party) (which shall not include, for avoidance of doubt, fees payable pursuant to any joint marketing, cross marketing, procurement, branding or licensing agreement); and (e) any payment or prepayment of principal of, premium, if any, or interest on, or redemption, purchase, retirement, defeasance (including in substance or legal defeasance), sinking fund or similar payment with respect to any subordinated indebtedness (in each case other than as payable to a Loan Party or, in the case of payments or prepayments of Obligations made in accordance with the Loan Documents, to a Lender) (including any Subordinated Indebtedness).

"Revolving Administrative Agent" shall have the meaning given in the definition of Revolving Facility.

"Revolving Collateral Agent" shall mean Fifth Third Bank, as collateral agent under the Revolving Facility and any successor thereto in such capacity.

"Revolving Commitments" shall have the meaning given to the term "Commitments" in the Revolving Credit Agreement.

"Revolving Credit Agreement" shall have the meaning given in the definition of Revolving Facility.

"Revolving Facility" shall mean the revolving credit facility under that certain Revolving Credit Agreement, dated as of January 24, 2017 (as amended, amended and restated, supplemented, refinanced, replaced or otherwise modified from time to time), by and among the Borrower, Fifth Third Bank, as administrative agent (and any successor thereto in such capacity, the "Revolving Administrative Agent"), and the banks, financial institutions and other entities from time to time party thereto as lenders (the "Revolving Credit Agreement").

"Revolving Facility Documents" shall mean the "Loan Documents" (or any similar term) as defined in the Revolving Credit Agreement.

"Revolving Letters of Credit" shall mean all letters of credit issued pursuant to the Revolving Credit Agreement.

"Revolving Loans" shall mean all revolving loans made from time to time pursuant to the Revolving Credit Agreement.

"Revolving Obligations" shall have the meaning given to the term "Obligations" in the Revolving Credit Agreement.

"Revolving Secured Parties" shall have the meaning given to the term "Secured Parties" in the Revolving Credit Agreement.

"S&P" shall mean Standard & Poor's Ratings Group, Inc., a New York corporation, or any successor thereof.

"Sanctioned Country" shall mean, at any time, a country or territory that is subject to comprehensive Sanctions (currently Crimea, Cuba, Iran, North Korea, Sudan and Syria).

"Sanctioned Person" shall mean, at any time, (a) any Person listed in any Sanctions-related list of designated Persons maintained by the Office of Foreign Assets Control of the U.S. Department of the Treasury or the U.S. Department of State, (b) any Person located, organized or resident in a Sanctioned Country or (c) any Person 50% or more individually or in the aggregate owned by any Person described in clause (a).

"Sanctions" shall mean economic or financial sanctions or trade embargoes imposed, administered or enforced from time to time by the U.S. government, including those administered by the Office of Foreign Assets Control of the U.S. Department of the Treasury or the U.S. Department of State.

"Scheduled Casino Opening Date" shall have the meaning given in the Building Loan Disbursement Agreement.

"Scheduled Completion Date" shall have the meaning given in the Building Loan Disbursement Agreement.

"Scheduled Maturity Date" shall mean (a) with respect to Term A Loans, January 24, 2022 and (b) with respect to Term B Loans, January 24, 2023.

"SEC" shall mean the Securities and Exchange Commission or any successor thereof.

"Section 22 Lien Law Affidavit" shall mean the affidavit executed by an Authorized Officer of the Borrower, substantially in the form of Exhibit P or in such other form as may be reasonably satisfactory to the Administrative Agent in all respects, as the same may be amended, amended and restated, supplemented or otherwise modified from time to time in accordance with the Building Loan Disbursement Agreement, and otherwise in compliance with Section 22 of the Lien Law of the State of New York.

"Secured Parties" shall mean the Lead Arranger, the Agents, the Lenders, the Specified Hedging Counterparties and the Specified Cash Management Counterparties and shall include all former Lead Arranger, Agents, Lenders, Specified Hedging Counterparties and Specified Cash Management Counterparties (including each co-agent, sub-agent and attorney-in-fact appointed by the Agents from time to time pursuant to Article VIII) to the extent that any Obligations owing to such Persons were incurred while such Persons were a Lead Arranger, Agent, Lender, Specified Hedging Counterparty or Specified Cash Management Counterparty (including co-agents, sub-agents and attorneys-in-fact appointed by the Agents from time to time pursuant to Article VIII) and such Obligations have not been paid in full.

"Securities" shall mean any stock, shares, partnership interests, voting trust certificates, certificates of interest or participation in any profit sharing agreement or arrangement, options, warrants, bonds, debentures, notes, or other evidences of indebtedness, secured or unsecured, convertible, subordinated or otherwise, or in general any instruments commonly known as "securities" or any certificates of interest, shares or participations in temporary or interim certificates for the purchase or acquisition of, or any right to subscribe to, purchase or acquire, any of the foregoing.

"Securities Act" shall mean the Securities Act of 1933, as amended from time to time, and any successor statute.

"Security Documents" shall mean the Pledge and Security Agreement, the Equity Pledge Agreement, the Control Agreements, the Mortgages, the Assignments of Leases and Rents, the Intellectual Property Security Agreements, the Consents and each of the other security agreements, pledges, mortgages, consents and other instruments and documents executed and delivered pursuant to any of the foregoing, or pursuant to Section 5.11, Section 5.12 or Section 5.14 or that otherwise are intended or purport to grant Liens to the Collateral Agent for the benefit of the Secured Parties to secure all or a portion of the Obligations.

"Senior Permitted Liens" shall mean each of the following: (a) Permitted Liens granted or permitted under Section 6.02(b), Section 6.02(c), Section 6.02(d), Section 6.02(e), Section 6.02(f), Section 6.02(g), Section 6.02(h), Section 6.02(i), Section 6.02(j), Section 6.02(l), Section 6.02(m), Section 6.02(n), Section 6.02(o) (with respect to the IDA Lease Agreement), Section 6.02(q), Section 6.02(t), Section 6.02(u), Section 6.02(v), Section 6.02(x) (which are equal and ratable with the Liens securing the Obligations), Section 6.02(z), Section 6.02(aa) and Section 6.02(cc) as applicable, and (b) with respect to Mortgaged Property, Permitted Liens set forth in a title policy delivered pursuant to Section 4.01(l), Section 5.11 or Section 5.12. Notwithstanding the foregoing, the foregoing Liens (other than under Section 6.02(x)) shall be deemed Senior Permitted Liens only to the extent given priority over the Lien created under the Loan Documents pursuant to applicable law or pursuant to documentation or instruments entered into by the Administrative Agent or the Collateral Agent in accordance with Section 8.09(a).

"Solvency Certificate" shall mean a Solvency Certificate of the Borrower or the Completion Guarantor substantially in the form of Exhibit D.

"Solvent" shall mean, with respect to any Person, that as of the date of determination, both (a) (i) the sum of such Person's debt (including contingent liabilities) does not exceed the present fair saleable value of such Person's present assets on a going concern basis; (ii) such Person's capital is not unreasonably small in relation to its business (in the case of any Loan Party, as contemplated on the Closing Date and reflected in the projections provided to the Lead Arranger and the Administrative Agent pursuant to Section 4.01(i) or with respect to any transaction contemplated or undertaken after the Closing Date); and (iii) such Person has not incurred and does not intend to incur, or believe (nor should it reasonably believe) that it will incur, debts beyond its ability to pay such debts as they become due (whether at maturity or otherwise); and (b) such Person is "solvent" within the meaning given that term and similar terms under applicable laws relating to fraudulent transfers and conveyances. For purposes of this definition, the amount of any contingent liability at any time shall be computed as the amount that, in light of all of the facts and circumstances existing at such time, represents the amount that can reasonably be expected to become an actual or matured liability (irrespective of whether such contingent liabilities meet the criteria for accrual under Statement of Financial Accounting Standard No. 5).

"Specified Cash Management Agreement" shall mean any Cash Management Agreement entered into by (a) the Borrower or any other Loan Party and (b) any Agent, the Lead Arranger, any Lender or an Affiliate of any Agent, the Lead Arranger or any Lender, in each case at the time of entering into such Cash Management Agreement (even if such Person subsequently ceases to be an Agent, the Lead Arranger, a Lender or an Affiliate of an Agent, the Lead Arranger or any Lender) (each a " Specified Cash Management Counterparty"); provided, that (i) the designation of any Cash Management Agreement as a Specified Cash Management Agreement (which shall be so designated in writing to the Administrative Agent by the Borrower or the applicable Specified Cash Management Counterparty) shall not alone create in favor of a Specified Cash Management Counterparty any rights in connection with the management or release of any Collateral or Obligations under the Loan Documents; (ii) as a condition to any Cash Management Agreement being designated as a Specified Cash Management Agreement, the applicable Specified Cash Management Counterparty(ies) shall be deemed to have appointed the Administrative Agent as its agent under the applicable Loan Documents and agreed to be bound by the provisions of Article VIII in favor of the Agents as if it were a Lender, including Section 8.03 and Section 8.07, and shall have been deemed to have made the representations and warranties set forth in Section 8.06 in favor of the Agents; and (iii) any Cash Management Agreement with a Specified Cash Management Counterparty may be designated as a Specified Cash Management Agreement hereunder but shall not constitute a "Specified Cash Management Agreement" (or similar term) under the Revolving Facility.

"Specified Cash Management Counterparty" has the meaning given in the definition of Specified Cash Management Agreement.

"Specified Equity Contribution" has the meaning given in Section 7.03.

"Specified FF&E Collateral" means any furniture, fixtures, equipment and other personal property (including heating, ventilation and air conditioning equipment) that is financed (including pursuant to a lease) or refinanced with the proceeds from or pursuant to an FF&E

Agreement, including each and every item or unit of equipment acquired with the proceeds thereof, each and every item or unit of equipment acquired by substitution or replacement thereof; all parts, components and other items pertaining to such property; all documents (including all warehouse receipts, dock receipts, bills of lading and the like) pertaining to such property; all licenses (other than Gaming Licenses) and warranties pertaining to such property; and to the extent not otherwise included, all proceeds (including insurance proceeds) of any of the foregoing; and collateral accounts solely holding such proceeds or proceeds of any financing to be used to purchase the assets described above.

"Specified Hedging Agreement" shall mean any Hedging Agreement entered into by (a) the Borrower or any other Loan Party and (b) any Agent, the Lead Arranger, any Lender (which term, for purposes of this definition, shall include any lender under the Revolving Facility) or an Affiliate of any Agent, the Lead Arranger or any Lender, in each case at the time of entering into such Hedging Agreement (even if such Person subsequently ceases to be an Agent, the Lead Arranger, a Lender or an Affiliate of an Agent, the Lead Arranger or a Lender) (each a "Specified Hedging Counterparty"); provided, that (i) the designation of any Hedging Agreement as a Specified Hedging Agreement (which shall be so designated in writing to the Administrative Agent by the Borrower or the applicable Specified Hedging Counterparty) shall not alone create in favor of a Specified Hedging Counterparty any rights in connection with the management or release of any Collateral or Obligations under the Loan Documents; and (ii) as a condition to any Hedging Agreement being designated as a Specified Hedging Agreement, the applicable Specified Hedging Counterparty(ies) shall be deemed to have appointed the Administrative Agent as its agent under the applicable Loan Documents and agreed to be bound by the provisions of Article VIII in favor of the Agents as if it were a Lender, including Section 8.03 and Section 8.07, and shall have been deemed to have made the representations and warranties set forth in Section 8.06 in favor of the Agents.

"Specified Hedging Counterparty" has the meaning given in the definition of Specified Hedging Agreement.

"Specified Interest Reserve Account Amount" shall mean, as of any date of determination, an amount equal to the sum of (a) the aggregate interest anticipated to be payable on the principal amount of all outstanding Loans (taking into account any Loans drawn on such date) from the date of determination to (but excluding) the Interest Reserve Date (as defined in the Building Loan Disbursement Agreement) (assuming such Loans remain outstanding during such entire period), and (b) the aggregate of all other amounts permitted to be paid pursuant to Section 4.3.1 of the Building Loan Disbursement Agreement from the date of determination to (but excluding) the Interest Reserve Date (as defined in the Building Loan Disbursement Agreement), less any amounts currently on deposit as of such date of determination in the Interest Reserve Account, such amount to be determined by the Administrative Agent in its sole discretion and on a net basis taking into consideration the Hedging Agreements in effect (or anticipated to be in effect) through such periods as required pursuant to Section 5.13.

"Sponsor" shall mean the Permitted Holders and, in each case, any Affiliates thereof.

"Statutory Reserves" shall mean a fraction (expressed as a decimal), the numerator of which is the number one and the denominator of which is the number one minus the aggregate of the maximum reserve percentages (including any marginal, special, emergency or supplemental reserves) expressed as a decimal established by the Board and any other banking authority, domestic or foreign, to which the Administrative Agent or any Lender (including any branch, Affiliate or other fronting office making or holding a Loan) is subject for eurocurrency funding (currently referred to as "Eurocurrency Liabilities" in Regulation D of the Board). LIBOR Loans shall be deemed to constitute eurocurrency funding and to be subject to such reserve requirements without benefit of or credit for proration, exemptions or offsets that may be available from time to time to any Lender under such Regulation D or any comparable regulation. Statutory Reserves shall be adjusted automatically on and as of the effective date of any change in any reserve percentage.

"Subject Date" has the meaning given in Section 7.03.

"Subordinated Indebtedness" shall mean Indebtedness of any Loan Party that (a) does not have any scheduled or other required principal payment, mandatory principal prepayment, sinking fund payment, interest payment, fee payment or similar payment due prior to one hundred eighty (180) days after the latest Scheduled Maturity Date, (b) is not secured by any Lien on any Property and (c) is subordinated to the Obligations pursuant to a Subordination Agreement.

"Subordinated Intercompany Note" shall mean an Intercompany Subordinated Demand Promissory Note, dated as of the date first required to be executed pursuant to Section 5.11, substantially in the form of Exhibit M, among each of the Loan Parties.

"Subordination Agreement" shall mean each Subordination Agreement, substantially in the form of Exhibit N, among the Administrative Agent, the Revolving Administrative Agent, the applicable Loan Parties and the providers of any Subordinated Indebtedness.

"Subsidiary" shall mean, with respect to any Person, any corporation, partnership, limited liability company, association, joint venture or other business entity of which more than 50% of the total voting power of shares of stock or other ownership interests entitled (without regard to the occurrence of any contingency) to vote in the election of the Person or Persons (whether directors, managers, trustees or other Persons performing similar functions) having the power to direct or cause the direction of the management and policies thereof is at the time owned or controlled, directly or indirectly, by that Person or one or more of the other Subsidiaries of that Person or a combination thereof; provided, in determining the percentage of ownership interests of any Person Controlled by another Person, no ownership interest in the nature of a "qualifying share" of the former Person shall be deemed to be outstanding. Notwithstanding the foregoing (and except for purposes of the definition of Unrestricted Subsidiary contained herein), an Unrestricted Subsidiary shall be deemed not to be a Subsidiary of the Borrower or any of its other Subsidiaries for purposes of this Agreement or any other Loan Document.

"Subsidiary Guarantor" shall mean each Subsidiary of the Borrower that has executed (whether by counterpart, joinder or otherwise) the Subsidiary Guaranty and the Pledge

and Security Agreement pursuant to Section 5.11; provided that any Person constituting a Subsidiary Guarantor as described above shall cease to constitute a Subsidiary Guarantor when it is released from the Subsidiary Guaranty and the Pledge and Security Agreement, in accordance with the terms hereof and thereof.

"Subsidiary Guaranty" shall mean the Subsidiary Guaranty, dated as of the date hereof, substantially in the form of Exhibit C-1, made by each Subsidiary Guarantor and the Borrower.

"Successor Company" has the meaning given in Section 6.09(a).

"Tax" shall mean any present or future tax, levy, impost, duty, assessment, charge, fee, deduction or withholding of any nature (including interest, penalties and additions thereto) and whatever called, by any Governmental Authority, on whomsoever and wherever imposed, levied, collected, withheld or assessed.

"Tax Amount" shall mean, with respect to any taxable year (or portion thereof) for which the Borrower is a Pass Through Entity or a member of consolidated, combined or unitary tax group of which a direct or indirect owner of the Borrower is the common parent, an amount equal to the product of (a) the Taxable Income of the Borrower and its Subsidiaries that are Pass Through Entities whose income is allocable to the Borrower or who are members of such consolidated, combined or unitary group, treating the Borrower and such Subsidiaries as a single company for this purpose, for such taxable year (or portion thereof) and (b) the Presumed Tax Rate, reduced by any Taxes paid or payable with respect to such Taxable Income directly by the Borrower or any of its Subsidiaries that are Pass Through Entities whose income is allocable to the Borrower or who are members of such consolidated, combined or unitary group, treating the Borrower and such Subsidiaries as a single company for this purpose.

"Tax Code" shall mean the Internal Revenue Code of 1986.

"Taxable Income" shall mean, with respect to any taxable year or portion thereof, an amount equal to (1) the net income and/or (without duplication) net gain of the Borrower and its Subsidiaries that are Pass Through Entities whose income is allocable to the Borrower or who are members of a consolidated, combined or unitary tax group of which a direct or indirect owner of the Borrower is the common parent for U.S. federal income tax purposes for such taxable year or portion thereof, reduced, without duplication and not below zero, by (2) the sum of (i) the cumulative net loss and/or net capital loss of the Borrower and such Subsidiaries for federal income tax purposes with respect to prior tax periods, not previously taken into account hereunder (collectively, "Prior Losses") and (ii) to the extent not previously taken into account hereunder, the $59,800,000 of net operating loss carryforwards of Empire that are not subject to limitation under Section 382 of the Tax Code as of December 31, 2015 (the "Empire Losses"); provided, that any such Prior Losses or Empire Losses shall be taken into account only to the extent that the Borrower's direct or indirect owners (or the consolidated, combined or unitary tax group of which the Borrower is a member) would be permitted under the Tax Code to deduct such Prior Losses or Empire Losses against the net income and/or net gain of the Borrower and such Subsidiaries that is allocated to them, or required to be taken into account by the consolidated, combined or unitary tax group, as

applicable, for such taxable year or portion thereof (i.e., giving effect to any applicable limitations under the Tax Code, including the limitation on using net capital loss to offset ordinary income, limitations under Section 382 of the Tax Code, time period limitations with respect to the use of loss carryforwards, limitations under the alternative minimum tax, etc.), provided, however, for this purpose, the Empire Losses shall be assumed to be only usable against net income and/or net gain of the Borrower and such Subsidiaries for U.S. federal income tax purposes and any actual utilization of the Empire Losses due to net income and/or net gain of a member of the Empire U.S. federal consolidated group other than the Borrower or such Subsidiaries shall be disregarded (solely for purposes of determining Taxable Income hereunder).

"Term A Lender" shall mean a Lender with an outstanding Term A Loan Commitment or an outstanding Term A Loan.

"Term A Loan" shall mean Term A Loans funded to the Borrower under the Term A Loan Commitments.

"Term A Loan Availability Period" shall mean the period beginning on the Closing Date and ending on the earliest to occur of (a) the reduction of the Term A Loan Commitments to zero as a result of the funding of Term A Loans thereunder, (b) July 24, 2018 and (c) termination of this Agreement.

"Term A Loan Commitment" shall mean, with respect to any Lender, such Lender's commitment to make or otherwise fund a Term A Loan pursuant to Section 2.01(a)(i), and "Term A Loan Commitments" shall mean such commitments of all such Lenders in the aggregate. The amount of each Lender's Term A Loan Commitment is set forth on the Lender Addendum delivered by such Lender on or prior to the Closing Date or in any Assignment and Acceptance pursuant to which such Lender assumed any Term A Loan Commitments, subject to any adjustment or reduction pursuant to the terms and conditions hereof. The aggregate amount of the Term A Loan Commitments as of the Closing Date is $70,000,000.

"Term A Loan Exposure" shall mean, with respect to any Term A Lender, as of any date of determination, the sum of (a) the outstanding principal amount of the Term A Loans of such Term A Lender plus (b) such Lender's Term A Loan Commitment (exclusive of any portion thereof that has been terminated by funding or otherwise).

"Term A Loan Maturity Date" shall mean the earlier of (a) the Scheduled Maturity Date with respect to Term A Loans and (b) the date that all Term A Loans shall become due and payable in full hereunder, whether by acceleration or otherwise.

"Term B Lender" shall mean a Lender with an outstanding Term B Loan Commitment or an outstanding Term B Loan.

"Term B Loan" shall mean Term B Loans funded to the Borrower under the Term B Loan Commitments.

"Term B Loan Commitment" shall mean, with respect to any Lender, such Lender's commitment to make or otherwise fund a Term B Loan pursuant to Section 2.01(a)(ii), and "Term B Loan Commitments" shall mean such commitments of all such Lenders in the aggregate. The amount of each Lender's Term B Loan Commitment is set forth on the Lender Addendum delivered by such Lender on or prior to the Closing Date. The aggregate amount of the Term B Loan Commitments as of the Closing Date is $415,000,000.

"Term B Loan Exposure" shall mean, with respect to any Term B Lender, as of any date of determination, the sum of (a) the outstanding principal amount of the Term B Loans of such Term B Lender plus (b) such Lender's Term B Loan Commitment (exclusive of any portion thereof that has been terminated by funding or otherwise).

"Term B Loan Maturity Date" shall mean the earlier of (a) the Scheduled Maturity Date with respect to Term B Loans and (b) the date that all Term B Loans shall become due and payable in full hereunder, whether by acceleration or otherwise.

"Terminated Lender" shall have the meaning given in Section 2.22.

"Thirtieth Month" shall mean the date that is thirty months after the Closing Date.

"Title Company" shall have the meaning given in Section 4.01(l).

"Trade Date" shall have the meaning given in Section 9.04(k)(i).

"Transactions" shall mean, collectively, (a) the execution, delivery and performance by the Companies of the Loan Documents and the Revolving Facility Documents to which they are a party, (b) the borrowings hereunder and under the Revolving Credit Agreement, the issuance of Revolving Letters of Credit and the use of proceeds of each of the foregoing and (c) the granting of Liens pursuant to the Security Documents and the Revolving Facility Documents.

"Treasury Rate" shall mean, as of any Pre-Thirtieth Month Repayment Date, the yield to maturity as of such date of United States Treasury securities with a constant maturity (as compiled and published in the most recent Federal Reserve Statistical Release H.15 (519) that has become publicly available at least two (2) Business Days prior to such date (or, if such Statistical Release is no longer published, any publicly available source of similar market data)) most nearly equal to the period from such date to the Thirtieth Month; provided, however, that if the period from the Pre-Thirtieth Month Repayment Date to the Thirtieth Month is less than one year, the weekly average yield on actually traded United States Treasury securities adjusted to a constant maturity of one year will be used.

"Type of Loan" shall mean an ABR Loan or a LIBOR Loan.

"UCC" shall mean the Uniform Commercial Code, as in effect from time to time in any jurisdiction.

"Uniform Customs" shall mean the Uniform Customs and Practice for Documentary Credits (2007 Revision), effective July, 2007 International Chamber of Commerce Publication No. 600.

"Unrestricted Subsidiary" shall mean any Subsidiary of the Borrower that is (i) acquired or created after the Closing Date and (ii) designated by the Borrower as an Unrestricted Subsidiary hereunder by written notice to the Administrative Agent at the time that such Subsidiary is created or acquired; provided that the Borrower shall only be permitted to so designate such Subsidiary as an Unrestricted Subsidiary after the Closing Date so long as (a) no Default or Event of Default then exists or would result therefrom, (b) such Unrestricted Subsidiary does not own any Equity Interests in, or have any Lien on any property of, the Borrower or any Subsidiary of the Borrower, other than a Subsidiary of the Unrestricted Subsidiary, (c) any Indebtedness and other obligations of such Unrestricted Subsidiary are not recourse to the Borrower or any of its Subsidiaries (other than Unrestricted Subsidiaries) or to any of their respective assets, (d) all of the provisions of Section 6.15 shall have been complied with in respect of such newly-designated Unrestricted Subsidiary, (e) such Unrestricted Subsidiary has been designated as an "Unrestricted Subsidiary" under the Revolving Credit Agreement and (f) such Unrestricted Subsidiary shall be capitalized (to the extent capitalized by the Borrower or any of its Subsidiaries) through Investments as permitted by, and in compliance with, Section 6.07 and with any assets owned by such Unrestricted Subsidiary at the time of the initial designation thereof to be treated as Investments in such Unrestricted Subsidiary pursuant to Section 6.07.

"U.S. Tax Compliance Certificate" shall have the meaning given in Section 2.19(e).

"Weighted Average Life to Maturity" shall mean, when applied to any Indebtedness at any date, the number of years obtained by dividing: (a) the sum of the products obtained by multiplying (i) the amount of each then remaining installment, sinking fund, serial maturity or other required payments of principal, including payment at final maturity, in respect thereof, by (ii) the number of years (calculated to the nearest one-twelfth) that will elapse between such date and the making of such payment; by (b) the then outstanding principal amount of such Indebtedness.

"wholly owned Subsidiary" of any Person shall mean a subsidiary of such Person of which securities (except for directors' qualifying shares) or other ownership interests representing 100% of the Capital Stock are, at the time any determination is being made, owned, Controlled or held by such Person or one or more wholly owned Subsidiaries of such Person or by such Person and one or more wholly owned Subsidiaries of such Person.

"Withdrawal Liability" shall mean liability to a Multiemployer Plan as a result of a complete or partial withdrawal from such Multiemployer Plan, as such terms are defined in Part I of Subtitle E of Title IV of ERISA.

"Write-Down and Conversion Powers" shall mean, with respect to any EEA Resolution Authority, the write-down and conversion powers of such EEA Resolution Authority from time to time under the Bail-In Legislation for the applicable EEA Member Country, which write-down and conversion powers are described in the EU Bail-In Legislation Schedule.

Section 1.02. **Terms Generally**. The definitions in Section 1.01 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. The words "include", "includes" and "including", and words of similar import, shall not be limiting and shall be deemed to be followed by the phrase "without limitation". The word "will" shall be construed to have the same meaning and effect as the word "shall". The words "herein", "hereof" and "hereunder", and words of similar import, shall be construed to refer to this Agreement in its entirety and not to any particular provision of this Agreement unless the context shall otherwise require. The word "or" is not exclusive. Unless the context otherwise requires, the expressions "payment in full," "paid in full" and any other similar terms or phrases when used with respect to the Obligations, the Secured Obligations (as defined in the Security Documents), the Guaranteed Obligations (as defined in the Subsidiary Guaranty), the Senior Obligations (as defined in any agreement subordinating the Indebtedness of a Loan Party to the Obligations) or the Obligations of any Class, shall mean the termination of all the Commitments (or all of the Commitments in respect of such Class), payment in full, in Cash, of all of the Obligations (or all of the Obligations in respect of such Class)(other than any unasserted contingent reimbursement or indemnity obligations), the termination of all Specified Hedging Agreements and the payment in full of all of the obligations under the Specified Cash Management Agreements (other than obligations under the Specified Cash Management Agreements not then due and payable and that do not become due and payable as a result of the payment in full of the Obligations). All references herein to Articles, Sections, Appendices, Exhibits and Schedules shall be deemed references to Articles and Sections of, and Exhibits, Appendices and Schedules to, this Agreement unless the context shall otherwise require. In the computation of periods of time from a specified date to a later specified date, the word "from" means "from and including;" the words "to" and "until" each mean "to but excluding;" and the word "through" means "to and including". Unless expressly described to the contrary, references to (a) any document, instrument or agreement (i) shall include all exhibits, schedules and other attachments thereto, (ii) shall include all documents, instruments or agreements issued or executed in replacement thereof, and (iii) shall mean such document, instrument or agreement, or replacement or predecessor thereto, as amended, amended and restated, supplemented or otherwise modified (or reaffirmed by any reaffirmation or other agreement) from time to time and in effect at the time of determination (subject, in each case, to any restrictions on such amendments, restatements, supplements or modifications set forth herein) and (b) provisions of any statute, rule or regulation or other similar Governmental Act shall include any amended or successor provisions thereof. Upon termination of any Disbursement Agreement, any defined terms used herein or in any other Loan Document having meanings given to such terms in such Disbursement Agreement shall continue to have the meanings given to such terms in such Disbursement Agreement as in effect immediately prior to such termination. Upon termination of the Revolving Credit Agreement, any defined terms used herein or in any other Loan Document having meanings given to such terms in the Revolving Credit Agreement shall continue to have the meanings given to such terms in the Revolving Credit Agreement as in effect on the Closing Date as such terms may have been permitted to be amended pursuant to and in compliance with the Loan Documents prior to such termination. Unless otherwise specifically indicated, the term "consolidated" with respect to any Person refers to such Person consolidated with its Subsidiaries, and excludes from such consolidation any Unrestricted Subsidiary as if such Unrestricted Subsidiary were not an Affiliate of such Person.

Section 1.03. Classification of Loans. For purposes of this Agreement, Loans may be classified and referred to by Class (e.g., a "Term A Loan") or Type (e.g., a "LIBOR Loan") or by Class and Type (e.g., a "LIBOR Term A Loan").

Section 1.04. Accounting Terms. Except as otherwise expressly provided herein, all accounting terms not otherwise defined herein shall have the meanings assigned to them in conformity with GAAP. Financial statements and other information required to be delivered by the Borrower to the Administrative Agent pursuant to Section 5.01 shall be prepared in accordance with GAAP as in effect at the time of such preparation (and delivered together with the reconciliation statements provided for in Section 5.01(e), if applicable), except for the absence of footnotes and year-end adjustments for any financial statements other than those prepared for a Fiscal Year end. Subject to the foregoing, the last sentence of this Section 1.04 and Section 9.18, calculations in connection with the definitions, covenants and other provisions hereof shall utilize accounting principles and policies in conformity with those used to prepare the financial statements delivered by the Borrower pursuant to Section 3.05, Section 4.01(h) and Section 5.01. For purposes of determining compliance with any covenant (including the computation of any financial covenant) contained herein, Indebtedness of the Borrower and its Subsidiaries shall be deemed to be carried at 100% of the outstanding principal amount thereof, and the effects of FASB ASC 825 and FASB ASC 470-20 on financial liabilities shall be disregarded. Anything in this Agreement to the contrary notwithstanding, (a) any obligation of a Person under a lease (whether existing now or entered into in the future) that is not (or would not be) required to be classified and accounted for as a capital lease on the balance sheet of such Person under GAAP as in effect either on the Closing Date or at the time such lease is entered into shall not be treated as a capital lease solely as a result of (x) the adoption of any changes in, or (y) changes in the application of, GAAP after such lease is entered into, and (b) for the avoidance of doubt and notwithstanding any requirement under GAAP as in effect at any time, any obligation of a Person under the Ground Lease, the Entertainment Village Lease and the Golf Course Lease shall be treated as an operating lease hereunder.

Section 1.05. Intentionally Omitted.

Section 1.06. Times of Day. Unless otherwise specified, all references herein to times of day shall be references to New York City time (daylight or standard, as applicable).

Section 1.07. Rounding. Any financial ratios required to be maintained by the Borrower pursuant to this Agreement shall be calculated by dividing the appropriate component by the other component, carrying the result to one place more than the number of places by which such ratio is expressed herein and rounding the result up or down to the nearest number (with a rounding-up if there is no nearest number).

Section 1.08. Electronic Execution of Assignments and Certain other Documents. The words "execute," "execution," "signed," "signature," and words of like import in or related to any document to be signed in connection with this Agreement and the transactions contemplated hereby (including Assignment and Acceptances, amendments or other modifications, waivers and consents) shall be deemed to include electronic signatures, the electronic matching of assignment terms and contract formations on electronic platforms approved by the Administrative Agent, or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability

as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state Laws based on the Uniform Electronic Transactions Act; provided that, notwithstanding anything contained herein to the contrary, the Administrative Agent is under no obligation to agree to accept electronic signatures in any form or in any format unless expressly agreed to by the Administrative Agent pursuant to procedures approved by it.

ARTICLE II.

THE FACILITY

Section 2.01. Loans.

(a) Commitment.

(i) On any Business Day during the Term A Loan Availability Period, subject to the terms and conditions hereof (including, without limitation, Section 4.02), each Term A Lender with a Term A Loan Commitment severally agrees to make, on the date requested by the Borrower pursuant to a Funding Notice, a Term A Loan to the Borrower in a principal amount equal to such Lender's pro rata share of the Term A Loan requested in such Funding Notice; provided that such amount shall not exceed such Lender's Term A Loan Commitment; provided, further, that any Borrowing of Term A Loans shall be in an aggregate principal amount of not less than $7,500,000 and in no case may more than eight (8) Borrowings of Term A Loans be made during the Term A Loan Availability Period. Any amounts borrowed as Term A Loans under this Section 2.01 and subsequently repaid or prepaid may not be reborrowed. Notwithstanding any other provision of this Agreement, (x) other than in the case of a Borrowing of Term A Loans on the last Business Day of the Term A Loan Availability Period, no Term A Loans may be borrowed hereunder until all proceeds of Term B Loans shall have been disbursed from the Loan Proceeds Account and (y) any outstanding Term A Loan Commitments shall automatically terminate upon the earliest of (A) all Term A Loan Commitments being fully funded pursuant to this Section 2.01(a)(i), (B) the Completion Date and (C) 5:00 p.m., New York City time, on the last Business Day of the Term A Loan Availability Period. Once funded, the Loans made pursuant to this Section 2.01(a)(i) shall be treated uniformly as Term A Loans.

(ii) Subject to the terms and conditions hereof, each Term B Lender severally agrees to make to the Borrower, and the Borrower may request, on the Closing Date, Term B Loans to the Borrower in an aggregate principal amount of such Lender's

Term B Commitment. Notwithstanding any other provision of this Agreement, undrawn Term B Commitments shall automatically terminate on the Closing Date upon the funding of Term B Loans pursuant to this Section 2.01(a)(ii). Any amounts borrowed as Term B Loans under this Section 2.01 and subsequently repaid or prepaid may not be reborrowed.

(b) Borrowing Mechanics for Loans. The Borrower shall deliver to the Administrative Agent a fully executed Funding Notice no later than 11:00 a.m. (New York City time) at least one Business Day prior to the requested date of funding of any Loan, in the case of a funding of ABR Loans, and at least three Business Days prior to the requested date of funding of any Loan, in the case of a funding of LIBOR Loans, and in any case which requested date of funding shall be a Business Day. Except as otherwise provided herein, a Funding Notice for a Loan shall be irrevocable and the Borrower shall be bound to make a Borrowing in accordance therewith. Promptly upon receipt by the Administrative Agent of such Funding Notice, the Administrative Agent shall notify each Lender of the proposed Borrowing. Subject to the terms and conditions set forth in this Agreement, each Lender shall make its Loan available to the Administrative Agent not later than 1:00 p.m. (New York City time) on the applicable Credit Date, by wire transfer of same day funds in Dollars, at the Administrative Agent's Principal Office. Upon satisfaction or waiver of the applicable conditions precedent specified herein, the Administrative Agent shall cause the proceeds of Loans received by the Administrative Agent from the Lenders to be credited (i) to the Interest Reserve Account in an amount equal to the Specified Interest Reserve Account Amount, as calculated on such date, (ii) in the case of Term B Loans made on the Closing Date, (x) to the Building Loan Cash Management Account (as defined in the Building Loan Disbursement Agreement) in an amount equal to $5,000,000 and (y) to the Project Company Funds Account and the Project Cash Management Account (in each case, as defined in the Project Disbursement Agreement) in an aggregate amount equal to the Cost of Improvement Reimbursement Amount, (iii) in the case of Term A Loan, to the Golf Course Loan Account in an amount not to exceed the Golf Course Loan Amount and (iv) to the Loan Proceeds Account in an amount equal to all other proceeds of Term Loans received by the Administrative Agent.

Section 2.02. Intentionally Omitted.

Section 2.03. Intentionally Omitted.

Section 2.04. Intentionally Omitted.

Section 2.05. Pro Rata Shares; Availability of Funds.

(a) Pro Rata Shares. All Loans shall be made by the Lenders simultaneously and proportionately to their respective Pro Rata Shares of the applicable Class or Classes, it being understood that no Lender shall be responsible for any default by any other Lender in such other Lender's obligation to make a Loan requested hereunder nor shall any Commitment of any Lender be increased or decreased as a result of a default by any other Lender in such other Lender's obligation to make a Loan requested hereunder. Each Lender agrees that, in computing such Lender's portion of any Loans or other extensions of credit to be made hereunder, the Administrative Agent may, in its discretion, round each Lender's Pro Rata Share of such Loans or other extensions of credit to the next higher or lower whole Dollar amount.

(b) Availability of Funds. Unless the Administrative Agent shall have been notified by any Lender prior to the applicable Credit Date that such Lender does not intend to make available to the Administrative Agent the amount of such Lender's Loan requested on such Credit Date, the Administrative Agent may assume that such Lender has made such amount available to the

Administrative Agent on such Credit Date and the Administrative Agent may, in its sole discretion, but shall not be obligated to, make available to the Borrower a corresponding amount on such Credit Date. If such corresponding amount is not in fact made available to the Administrative Agent by such Lender, the Administrative Agent shall be entitled to recover such corresponding amount on demand from such Lender together with interest thereon, for each day from such Credit Date until the date such amount is paid to the Administrative Agent, at the customary rate set by the Administrative Agent for the correction of errors among banks for three (3) Business Days and thereafter at the Alternate Base Rate. If such Lender does not pay such corresponding amount forthwith upon the Administrative Agent's demand therefor, the Administrative Agent shall promptly notify the Borrower and the Borrower shall immediately pay such corresponding amount to the Administrative Agent together with interest thereon, for each day from such Credit Date until the date such amount is paid to the Administrative Agent, at the rate payable hereunder for ABR Loans. Nothing in this Section 2.05(b) shall be deemed to relieve any Lender from its obligation to fulfill its Commitments hereunder or to prejudice any rights that the Borrower may have against any Lender as a result of any default by such Lender hereunder. In the event any Loan proceeds received by the Administrative Agent in accordance with this Agreement are not delivered to the Borrower as a result of any condition precedent herein specified not having been met, the Administrative Agent shall return the amounts so received to the Lenders who delivered such Loan proceeds to the Administrative Agent.

Section 2.06. Evidence of Debt; Register; Lenders' Books and Records; Notes.

(a) Lenders' Evidence of Debt. Each Lender shall maintain on its internal records an account or accounts evidencing the Obligations of the Borrower to such Lender, including the amounts of the Loans made by it and each repayment and prepayment in respect thereof. Any such recordation shall be prima facie evidence of the matters so recorded; provided, that the failure to make any such recordation, or any error in such recordation, shall not affect any Lender's Commitments or the Borrower's Obligations in respect of any Loans.

(b) Register. The Administrative Agent shall, acting solely for purposes of this Section 2.06(b) on behalf of and as non-fiduciary agent for the Borrower, maintain at its Principal Office a register for the recordation of the names and addresses of Lenders and the Commitments and Loans, including in each case, principal and stated interest thereof, of each Lender from time to time (the "Register"). The Register shall be available for inspection by the Borrower or any Lender (but only to the extent of entries in the Register that are applicable to such Lender) at any reasonable time and from time to time upon reasonable prior notice. The Administrative Agent shall record in the Register the Commitments and the Loans and, with respect to each Loan, the Type of Loan thereof and, if applicable, the Interest Period applicable thereto, each repayment or prepayment in respect of the principal amount of the Loans and each assignment thereof pursuant to Section 9.04(c), and any such recordation shall be, absent manifest error, evidence of the matters so recorded and the Borrower, the Administrative Agent and each Lender shall treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement; provided, failure to make any such recordation, or any error in such recordation, shall not affect any Lender's Commitments or the Borrower's Obligations in respect of any Loan. The Borrower hereby designates the Administrative Agent to serve as the Borrower's representative and non-

fiduciary agent solely for purposes of maintaining the Register as provided in this Section 2.06(b), and the Borrower hereby agrees that, to the extent the Administrative Agent serves in such capacity, the Administrative Agent and its officers, directors, employees, agents and affiliates shall constitute "Indemnitees." It is the intention of the parties hereto that the Loans will be treated as in "registered form" within the meaning of Sections 163(f), 871(h)(2) and 881(c)(2) of the Tax Code (and any other relevant or successor provisions of the Tax Code).

(c) Notes. If so requested by any Lender by written notice to the Borrower at least two (2) Business Days prior to the Closing Date, or at any time thereafter, the Borrower shall execute and deliver to such Lender (and/or, if applicable and if so specified in such notice, to any Person who is an assignee of such Lender pursuant to Section 9.04) on the Closing Date (or, if such notice is delivered less than two (2) Business Days prior to or after the Closing Date, promptly after the Borrower's receipt of such notice) a Note or Notes to evidence such Lender's Term A Loan or Term B Loan, as the case may be.

Section 2.07. Interest on Loans.

(a) Except as otherwise set forth herein, each Type of Loans shall bear interest on the unpaid principal amount thereof from the date made through repayment (whether by acceleration or otherwise) thereof as follows: (1) if an ABR Loan, at the Alternate Base Rate plus the Applicable Margin, or (2) if a LIBOR Loan, at the Adjusted LIBO Rate plus the Applicable Margin.

(b) The basis for determining the rate of interest with respect to any Loan, and the Interest Period with respect to any LIBOR Loan, shall be selected by the Borrower and notified to the Administrative Agent pursuant to the applicable Funding Notice or Conversion/Continuation Notice, as the case may be. If on any day a Loan is outstanding with respect to which a Funding Notice or Conversion/Continuation Notice has not been delivered to the Administrative Agent in accordance with the terms hereof specifying the applicable basis for determining the rate of interest, then for that day such Loan shall be an ABR Loan.

(c) In connection with LIBOR Loans there shall be no more than eight (8) Interest Periods outstanding at any time. In the event the Borrower fails to specify between an ABR Loan or a LIBOR Loan in the applicable Funding Notice or Conversion/Continuation Notice (or, in the case of the conversion or continuation of a Loan, fails to deliver a Conversion/Continuation Notice with respect thereto), such Loan (if outstanding as a LIBOR Loan) will be automatically converted into an ABR Loan on the last day of the then current Interest Period for such Loan (or if outstanding as an ABR Loan will remain as, or (if not then outstanding) will be made as, an ABR Loan). In the event the Borrower fails to specify an Interest Period for any LIBOR Loan in the applicable Funding Notice or Conversion/Continuation Notice, the Borrower shall be deemed to have selected an Interest Period of one month. As soon as practicable on each Interest Rate Determination Date, the Administrative Agent shall determine (which determination shall, absent manifest error, be final, conclusive and binding upon all parties) the interest rate that shall apply to the LIBOR Loans for which an interest rate is then being determined for the applicable Interest Period and shall promptly give notice thereof to the Borrower and each applicable Lender.

(d) Interest payable pursuant to Section 2.07(a) shall be computed, in the case of ABR Loans, on the basis of a 365/366-day year for the actual number of days elapsed in the period during which such interest accrues, and in the case of LIBOR Loans, on the basis of a 360-day year, in each case for the actual number of days elapsed in the period during which it accrues. In computing interest on any Loan, the date of the making of such Loan or the first day of an Interest Period applicable to such Loan or, with respect to an ABR Loan being converted from a LIBOR Loan, the date of conversion of such LIBOR Loan to such ABR Loan, as the case may be, shall be included, and the date of payment of such Loan or the expiration date of an Interest Period applicable to such Loan or, with respect to an ABR Loan being converted to a LIBOR Loan, the date of conversion of such ABR Loan to such LIBOR Loan, as the case may be, shall be excluded; provided, if a Loan is repaid on the same day on which it is made, one day's interest shall be paid on that Loan.

(e) Except as otherwise set forth herein, interest on each Loan shall be payable, in Cash, in arrears (i) on each Interest Payment Date applicable to that Loan; (ii) upon any prepayment of that Loan, whether voluntary or mandatory, to the extent accrued on the amount being prepaid; and (iii) at maturity, including final maturity.

Section 2.08. Conversion/Continuation.

(a) Subject to Section 2.17 and so long as neither (x) a Default or an Event of Default under Section 7.01(b), Section 7.01(c), Section 7.01(h) or Section 7.01(i) shall have occurred and then be continuing nor (y)(i) any other Event of Default shall have occurred and be continuing at such time and (ii) the Administrative Agent or the Required Lenders shall have determined in their sole discretion not to permit conversions to or continuations of LIBOR Loans pursuant to this Section 2.08(a), the Borrower shall have the option:

(i) to convert at any time all or any part of any Loan in a minimum amount equal to $250,000 and integral multiples of $100,000 in excess of that amount from one Type of Loan to another Type of Loan; provided that, a LIBOR Loan may only be converted on the expiration of the Interest Period applicable to such LIBOR Loan unless the Borrower shall pay all amounts due under Section 2.17 in connection with any such conversion; or

(ii) upon the expiration of any Interest Period applicable to any LIBOR Loan, to continue all or any portion of such Loan in a minimum amount equal to $250,000 and integral multiples of $100,000 in excess of that amount as a LIBOR Loan.

(b) In order to exercise any conversion option pursuant to Section 2.08(a)(i) or continuation option pursuant to Section 2.08(a)(ii), the Borrower shall deliver a Conversion/Continuation Notice to the Administrative Agent no later than 11:00 a.m. (New York City time) at least one Business Day in advance of the proposed conversion date (in the case of a conversion to an ABR Loan) and at least three Business Days in advance of the proposed conversion/continuation date (in the case of a conversion to, or a continuation of, a LIBOR Loan). Except as otherwise provided herein, a Conversion/Continuation Notice for conversion to, or continuation of, any LIBOR Loans shall be irrevocable, and the Borrower shall be bound to effect a conversion or continuation in accordance therewith. If the Borrower shall fail to give any required notice as described in this

Section 2.08(b) or if such continuation is not permitted pursuant to Section 2.08(a), such Loans shall be automatically converted to ABR Loans on the last day of such then expiring Interest Period.

Section 2.09. Default Interest. Upon the occurrence and during the continuance of any Event of Default described in Section 7.01(b), (c) (with respect to interest only), (h) or (i), or, to the extent required by the Required Lenders, any Event of Default described in Section 7.01(d) (with respect to defaults under Section 6.08 only), the overdue principal amount of all Loans outstanding and any overdue interest payments on the Loans and Fees or other amounts owed and overdue under the Loan Documents shall in each case thereafter bear interest (including post-petition interest in any proceeding under any applicable Debtor Relief Law) payable on demand in Cash at a rate that is equal to the lesser of (a) 2.0% per annum in excess of the interest rate otherwise payable hereunder with respect to the applicable Loans (or, in the case of any such Fees and other amounts, at a rate which is 2.0% per annum in excess of the interest rate otherwise payable hereunder for ABR Loans) and (b) the maximum rate of interest permitted under applicable law; provided, in the case of LIBOR Loans, upon the expiration of the Interest Period in effect at the time any such increase in interest rate is effective such LIBOR Loans shall thereupon become ABR Loans and shall thereafter bear interest payable upon demand at a rate which is equal to the lesser of (i) 2.0% per annum in excess of the interest rate otherwise payable hereunder for ABR Loans and (ii) the maximum rate of interest permitted under applicable law (such rate, the "Default Rate"). Payment or acceptance of the increased rates of interest provided for in this Section 2.09 is not a permitted alternative to timely payment and shall not constitute a waiver of any Event of Default or otherwise prejudice or limit any rights or remedies of the Administrative Agent or any Lender.

Section 2.10. Fees.

(a) Intentionally Omitted.

(b) The Borrower agrees to pay commitment fees to each Term A Lender holding a Term A Loan Commitment for each day during the Term A Loan Availability Period equal to (i) the undrawn amount of such Term A Lender's Term A Loan Commitment as of such day, multiplied by (ii) a rate equal to (x) 2.50% per annum for the period commencing on the Closing Date through March 24, 2018 and (y) 5.00% per annum thereafter.

(c) All Fees referred to in Section 2.10(b) shall be paid to the Administrative Agent in Cash at its Principal Office and upon receipt, the Administrative Agent shall promptly distribute the same to each applicable Lender.

(d) In addition to any of the foregoing Fees, the Borrower agrees to pay to the Agents and the Lead Arranger such other Fees in the amounts and at the times separately agreed upon (including in Section 12 of the Fee Letter). Once paid, none of the Fees referred to in this Section 2.10 shall be refundable under any circumstances absent manifest error in the calculation of such Fees.

(e) All fees referred to in Section 2.10(b) shall be calculated on the basis of a 360-day year and the actual number of days elapsed (including the first day but excluding the last day) and shall be payable quarterly in arrears on the last Business Day of each March, June, September and

December of each year commencing on the first such date of the first full Fiscal Quarter to occur after the Closing Date and until the last day of the Term A Loan Availability Period. Such fees shall also be payable on the date on which any Term A Loans are funded pursuant to the Term A Loan Commitments and on the last day of the Term A Loan Availability Period. Additionally, on the date of each termination or reduction of Term A Loan Commitments (whether voluntary or mandatory), the Borrower shall pay the applicable fees set forth in Section 2.10(b) with respect to the amount of the Term A Loan Commitments so terminated or reduced accrued to, but excluding, the date of such termination or reduction.

Section 2.11. Scheduled Payments of Loans.

(a) The principal amount of the Term A Loans shall be repaid in installments (each, an "Installment") on each Installment Date relating to Term A Loans. Subject to the provisions of Section 2.11(c)(i), the amount of each Installment with respect to Term A Loans payable on each such Installment Date prior to the Term A Loan Maturity Date shall be equal to (x) in the case of the first four Installments, 2.50% of the aggregate original principal amount of all Term A Loan Commitments on the Closing Date, (y) in the case of each Installment thereafter, 3.75% of the aggregate original principal amount of all Term A Loan Commitments on the Closing Date and (z) the remainder of the outstanding principal amount of the Term A Loans shall be payable on the Term Loan Maturity Date.

(b) The principal amount of the Term B Loans shall be repaid in Installments on each Installment Date relating to Term B Loans. Subject to the provisions of Section 2.11(c)(i), the amount of each Installment with respect to Term B Loans payable on each such Installment Date prior to the Term B Loan Maturity Date shall be equal to 0.25% of the aggregate original principal amount of all Term B Loans made on the Closing Date and the remainder of the outstanding principal amount of the Term B Loans shall be payable on the Term B Loan Maturity Date.

(c) Notwithstanding the foregoing, (i) such Installments shall be reduced in connection with any voluntary or mandatory prepayments of the Loans in accordance with Section 2.12 through Section 2.14 to the extent set forth therein; (ii) the Term A Loans, together with all other amounts owed hereunder and under the other Loan Documents with respect thereto, shall, in any event, be paid in full on the Term A Loan Maturity Date; and (iii) the Term B Loans, together with all other amounts owed hereunder and under the other Loan Documents with respect thereto, shall, in any event, be paid in full on the Term B Loan Maturity Date.

Section 2.12. Voluntary Prepayments / No Voluntary Commitment Reductions / Repayment Premiums.

(a) Voluntary Prepayments.

(i) Any time and from time to time:

(1) with respect to ABR Loans, the Borrower may prepay any such ABR Loans on any Business Day in whole or in part; provided that each partial prepayment of Loans shall be

in an aggregate minimum amount of $250,000 and integral multiples of $100,000 in excess of that amount, and

(2) with respect to LIBOR Loans, the Borrower may prepay any such LIBOR Loans on any Business Day in whole or in part; provided that each partial prepayment of Loans shall be in an aggregate minimum amount of $250,000 and integral multiples of $100,000 in excess of that amount.

(ii) All such prepayments shall be made:

(1) upon not less than one (1) Business Day's prior written or telephonic notice in the case of ABR Loans, and

(2) upon not less than three (3) Business Days' prior written or telephonic notice in the case of LIBOR Loans, in each case given to the Administrative Agent by 12:00 p.m. (New York City time) on the date required and, if given by telephone, promptly confirmed in writing to the Administrative Agent (and the Administrative Agent will promptly notify each applicable Lender) and specifying the principal amount of the Loans to be prepaid and the applicable prepayment date. Upon the giving of any such notice, the principal amount of the Loans specified in such notice (together with any amounts required to be paid in connection therewith under Section 2.07(e) or Section 2.17(c)) shall become due and payable on the prepayment date specified therein. Any such voluntary prepayment shall be applied as specified in Section 2.14(a) and Section 2.14(c).

(b) No Voluntary Reduction of Commitments. Notwithstanding anything else contained in this Agreement to the contrary, the Borrower may not reduce the Commitments, in whole or in part, at any time.

(c) Repayment Premium. In the event that (x) the Term B Loans are prepaid or repaid in whole or in part (whether pursuant to this Section 2.12, Section 2.13 or otherwise (but excluding only repayments made pursuant to Section 2.11(b), Section 2.13(a)(ii), Section 2.13(c) and Section 2.13(d))), (y) a Term B Lender is replaced or prepaid pursuant to Section 2.22 (other than if a Defaulting Lender) or (z) payment of the then-outstanding principal amount of the Loans is accelerated in accordance with the Loan Documents, the Borrower shall pay to the applicable Lenders a repayment premium expressed as a percentage (other than in the case of a Make-Whole Premium) of the principal amount of such applicable Term B Loans prepaid, repaid, replaced or accelerated on the amount so prepaid, repaid or accelerated in the amount set forth in the applicable table below opposite the time period in which such prepayment, repayment or acceleration occurs:

Period	Prepayment Premium
From the Closing Date to (but excluding) the Thirtieth Month	The greater of the Make-Whole Premium and 2.00%
From the Thirtieth Month to (but excluding) the forty-second month anniversary of the Closing Date	2.00%
From the forty-second month anniversary of the Closing Date to (but excluding) the fifty-fourth month anniversary of the Closing Date	1.00%
Thereafter	0%

Such fees referred to in this clause (c) shall be paid to the Administrative Agent in Cash at its Principal Office upon any applicable repayment, replacement, prepayment or acceleration (including via any distributions or any other transfers on account of all or any part of the principal balance of any Term B Loan for any reason or at any time (whether or not upon maturity, whether mandatory or optional, whether voluntary or involuntary, including following any default or any acceleration (whether automatic or following notice), following any asset sale, or following the filing by or against any Loan Party of any petition under any Debtor Relief Laws (whether or not such payment, distribution, or transfer is under a plan of reorganization or liquidation or ordered by any court of competent jurisdiction) or otherwise)) and upon receipt, the Administrative Agent shall promptly distribute to each Term B Lender its Pro Rata Share thereof. Notwithstanding the forgoing, if any repayment premium described in this Section 2.12(c) becomes due and owing as a result of the principal amount of the Term B Loans being accelerated in accordance with the Loan Documents and the Lenders subsequently waive such acceleration by reinstating such Term B Loans, such repayment premiums resulting from such acceleration shall also be deemed waived (provided that nothing in this sentence shall be deemed to constitute a waiver of the Lenders' or the Administrative Agent's right to demand acceleration of the Obligations in accordance with the Loan Documents, permit an alternative to immediate payment of the Term B Loans and other Obligations upon any such acceleration or constitute a waiver of any Event of Default or otherwise prejudice or limit any rights or remedies of the Administrative Agent or any Lenders hereunder (whether as a result of any such acceleration or otherwise)). The Borrower agrees that the prepayment premium is paid as a fee for the right to prepay, and that the prepayment premium does not constitute liquidated damages or a prepayment penalty.

Section 2.13. Mandatory Prepayments.

(a) Not later than the fifth Business Day following (i) the receipt of Net Cash Proceeds by any Loan Party from any Asset Sale or (ii) the receipt of Net Cash Proceeds by any Loan Party as a result of the occurrence of any Recovery Event, the Borrower shall (or shall cause such other applicable Loan Party to) apply the Required Prepayment Percentage of the Net Cash Proceeds received with respect thereto in accordance with Section 2.14(b).

(b) In the event that any Loan Party shall receive Net Cash Proceeds from the issuance or other incurrence of Indebtedness for borrowed money of such Loan Party (other than Indebtedness permitted pursuant to Section 6.01 (excluding Indebtedness provided by Persons other than the

Sponsors pursuant to Section 6.01(l))), the Borrower shall (or shall cause such other applicable Loan Party to), substantially simultaneously with (and in any event not later than the Business Day next following) the receipt of such Net Cash Proceeds by such Loan Party, apply an amount equal to the Required Prepayment Percentage of such Net Cash Proceeds in accordance with Section 2.14(b).

(c) Commencing with the Fiscal Year in which the Full Opening Date occurs and for each Fiscal Year thereafter, no later than the earlier of (i) 125 days after the end of such Fiscal Year, and (ii) five (5) days after the date on which the financial statements with respect to such Fiscal Year are delivered pursuant to Section 5.01(c), the Borrower shall apply in accordance with Section 2.14(b), an amount equal to (A) the Required Prepayment Percentage of Consolidated Excess Cash Flow for (x) in the case of the first prepayment under this clause (c), to the extent made in respect of the Fiscal Year in which the Full Opening Date occurs, the period commencing on the first day of the first full Fiscal Quarter occurring after the Full Opening Date through the last day of such Fiscal Year, or (y) in the case of each other prepayment under this clause (c), the Fiscal Year then ended, minus (B) the aggregate principal amount of voluntary repayments of Loans made with internally generated cash flow during the Fiscal Year, minus (C) the Regulatory Cash Amount.

(d) To the extent permitted or required pursuant to Section 4.5 or 4.6 of the Building Loan Disbursement Agreement or Section 4.3 of the Project Disbursement Agreement, the Borrower shall apply the amounts described thereunder in accordance with Section 2.14(b).

(e) Notwithstanding anything to the contrary set forth in this Agreement or any other Loan Document, (x) if any Event of Default under Section 7.01(b), Section 7.01(c), Section 7.01(h) or Section 7.01(i) or any event of default under the comparable sections of the Revolving Credit Agreement then exists, no voluntary prepayment of Loans shall be permitted pursuant to Section 2.12 until the Discharge of Revolving Obligations and (y) if any Event of Default under Section 7.01(b), Section 7.01(c), Section 7.01(h), Section 7.01(i) or any event of default under the comparable sections of the Revolving Credit Agreement exists at the time any mandatory repayment of Loans is otherwise required to be made pursuant to Section 2.11 and this Section 2.13, then such amounts shall, in lieu of application hereunder, first be applied pursuant to the provisions of Sections 2.13 and 2.14 of the Revolving Credit Agreement until the Discharge of Revolving Obligations. If any Lender collects or receives any amounts received on account of the Obligations to which it is not entitled as a result of the application of this Section 2.13(e), such Lender shall hold the same in trust for the applicable Revolving Secured Parties and shall forthwith deliver the same to the Revolving Collateral Agent, for the account of the applicable Revolving Secured Parties, to be applied in accordance with the provisions of Section 2.13 and 2.14 of the Revolving Credit Agreement until the Discharge of Revolving Obligations or, if then applicable, Section 7.02 of the Revolving Credit Agreement until the Discharge of Revolving Obligations. Without limiting the generality of the foregoing, this Section 2.13(e) is intended to constitute and shall be deemed to constitute a "subordination agreement" within the meaning of Section 510(a) of Title 11 of the United States Code and is intended to be and shall be interpreted to be enforceable to the maximum extent permitted pursuant to applicable non-bankruptcy law and the applicable Revolving Secured Parties shall be deemed third party beneficiaries of this Section 2.13(e), entitled to enforce this

Section 2.13(e) as if direct signatories hereto. This Section 2.13(e) shall not be amended without the prior written consent of the Revolving Administrative Agent.

(f) The Borrower shall deliver to the Administrative Agent, (i) at the time of each prepayment required under this Section 2.13, a certificate signed by a Financial Officer of the Borrower setting forth in reasonable detail the calculation of the amount of such prepayment and (ii) at least three (3) Business Days prior written notice of any such pre-payment. In the event that the Borrower shall determine that the actual amount prepaid was less than the amount required to be prepaid, the Borrower shall promptly apply such excess amount in accordance with Section 2.14(b), and the Borrower shall concurrently therewith deliver to the Administrative Agent a certificate of a Financial Officer demonstrating the derivation of such excess.

Section 2.14. Application of Prepayments/Reductions.

(a) Application of Voluntary Prepayments of Loans. Subject to Section 2.13(e) and Section 2.15(g), any prepayment of any Loan pursuant to Section 2.12(a) shall be applied as specified by the Borrower in the applicable notice of prepayment; provided, that, in the event that the Borrower fails to specify the Loans to which any such prepayment shall be applied, such prepayment shall be applied to prepay the Loans pro rata to each Class of Term Loans then outstanding (in accordance with the respective outstanding principal amounts thereof) to the full extent thereof (such payment to be applied within each Class in order of maturity to the remaining scheduled Installments of principal thereof).

(b) Application of Mandatory Prepayments by Type of Loans. Subject to Section 2.13(e), any amount required to be paid pursuant to Section 2.13(a) through Section 2.13(d) shall be applied to prepay the Loans pro rata to each Class of Loans then outstanding (in accordance with the respective outstanding principal amounts thereof) to the full extent thereof (such payment to be applied within each Class (i) on a pro rata basis to reduce the remaining scheduled Installments of principal of the Loans excluding the final payment due on the Term A Loan Maturity Date or Term B Loan Maturity Date, as applicable, and (ii) after all such scheduled Installments have been reduced to zero, to reduce the final payment due on the Term A Loan Maturity Date or Term B Loan Maturity Date, as applicable). Notwithstanding the foregoing, to the extent that, with the agreement of the Borrower, the requisite percentage of Lenders waive their right to receive any portion of any mandatory prepayment of Loans pursuant to Section 2.13(a), (b) or (c), such waived portion may be applied by the Borrower to prepay outstanding Revolving Loans.

(c) Application of Prepayments of Loans to ABR Loans and LIBOR Loans. Any prepayment of the Loans pursuant to Section 2.12 or Section 2.13 shall be applied (i) to such Loans on a pro rata basis (in accordance with the respective outstanding principal amounts thereof) and (ii) first to ABR Loans to the full extent thereof before application to LIBOR Loans, in each case in a manner which minimizes the amount of any payments required to be made by the Borrower pursuant to Section 2.17(c).

Section 2.15. General Provisions Regarding Payments.

(a) All payments by or on behalf of the Borrower of principal, premium, interest, Fees and other Obligations shall be made in Dollars in same day funds, without defense, setoff or counterclaim, free of any restriction or condition, and delivered to the Administrative Agent not later than 1:00 p.m. (New York City time) on the date due at the Administrative Agent's Principal Office for the account of the Lenders.

(b) All payments in respect of the principal amount of any Loan (including all payments, distributions or other transfers in respect of the principal amount of any Loan (whether or not upon maturity, whether mandatory or optional, whether voluntary or involuntary, including following any default or any acceleration (whether automatic or following notice), following any Asset Sale, or following the filing by or against any Loan Party of any petition under any Debtor Relief Law (whether or not such payment, distribution, or transfer is under a plan of reorganization or liquidation or ordered by any court of competent jurisdiction) or otherwise)) shall be accompanied by payment, in Cash, of accrued interest on the principal amount being repaid or prepaid and any required fees or repayment premium pursuant to Section 2.12(c).

(c) The Administrative Agent shall promptly distribute to each Lender at such address as such Lender shall indicate in writing, such Lender's Pro Rata Share of all payments and prepayments of principal, premium and interest due hereunder, together with all other amounts due thereto, including all Fees payable with respect thereto (or, to the extent any such amounts are paid with respect to any such Lender's interests individually, the Administrative Agent shall promptly distribute to such Lender such amounts), to the extent received by the Administrative Agent.

(d) Notwithstanding the foregoing provisions hereof, if any Conversion/Continuation Notice is withdrawn as to any Affected Lender or if any Affected Lender makes ABR Loans in lieu of its Pro Rata Share of any LIBOR Loans, the Administrative Agent shall give effect thereto in apportioning payments received thereafter.

(e) Except as otherwise provided herein and subject to the provisos set forth in the definition of "Interest Period", whenever any payment to be made hereunder shall be stated to be due on a day that is not a Business Day, such payment shall be made on the next succeeding Business Day and such extension of time shall be included in the computation of the payment of interest and of Fees hereunder.

(f) Any payment by or on behalf of the Borrower hereunder that is not made in same day funds prior to 1:00 p.m. (New York City time) on the date due shall be a non-conforming payment in the Administrative Agent's sole discretion. Any such payment shall not be deemed to have been received by the Administrative Agent until the later of (i) the time such funds become available funds, and (ii) the applicable next Business Day. The Administrative Agent shall give prompt written notice to the Borrower and each applicable Lender if any payment is non-conforming. Any non-conforming payment may constitute or become a Default or an Event of Default in accordance with the terms of Section 7.01. Interest shall continue to accrue on any principal as to which a non-conforming payment is made until such funds become available funds (but in no event

less than the period from the date of such payment to the next succeeding applicable Business Day) at the rate determined pursuant to Section 2.09.

(g) If an Event of Default shall have occurred and is continuing and not otherwise been waived or cured, and the maturity of the Obligations shall have been accelerated pursuant to Section 7.01, all payments or proceeds received by the Agents hereunder in respect of any of the Obligations shall be applied in accordance with the application arrangements described in Section 7.02**.**

Section 2.16. Ratable Sharing. Except to the extent that this Agreement or any other Loan Document provides for payments to be allocated to a particular Lender or Lenders (including as provided in the Security Documents with respect to amounts realized from the exercise of rights with respect to Liens on the Collateral), the Lenders hereby agree among themselves that if any of them shall, whether by voluntary payment (other than a voluntary prepayment of Loans made and applied in accordance with the terms hereof), through the exercise of any right of set-off or banker's lien, by counterclaim or cross action or by the enforcement of any right under the Loan Documents or otherwise, or as adequate protection of a deposit treated as cash collateral under any Debtor Relief Law, receive payment or reduction of a proportion of the aggregate amount of principal, premium, interest, Fees and other amounts then due and owing to such Lender hereunder or under the other Loan Documents (collectively, the "Aggregate Amounts Due" to such Lender) which is greater than the proportion received by any other Lender in respect of the Aggregate Amounts Due to such other Lender, then the Lender receiving such proportionately greater payment shall (a) notify the Administrative Agent and each such other Lender of the receipt of such payment and (b) apply a portion of such payment to purchase participations (which it shall be deemed to have purchased from each seller of a participation simultaneously upon the receipt by such seller of its portion of such payment) in the Aggregate Amounts Due to such other Lenders so that all such recoveries of Aggregate Amounts Due shall be shared by all applicable Lenders in proportion to the Aggregate Amounts Due to them; provided, (i) if all or part of such proportionately greater payment received by such purchasing Lender is thereafter recovered from such Lender upon the bankruptcy or reorganization of a Company or otherwise, those purchases shall be rescinded and the purchase prices paid for such participations shall be returned to such purchasing Lender ratably to the extent of such recovery, but without interest, and (ii) the provisions of this paragraph shall not be construed to apply to (x) any payment made by the Borrower pursuant to and in accordance with the express terms of this Agreement (including the application of funds arising from the existence of a Defaulting Lender), or (y) any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Loans to any assignee or participant, other than to the Borrower or any Subsidiary thereof (as to which the provisions of this paragraph shall apply). The Borrower expressly consents to the foregoing arrangement and agrees that any holder of a participation so purchased may exercise any and all rights of banker's lien, set-off or counterclaim with respect to any and all monies owing by any Company to that holder with respect thereto as fully as if that holder were owed the amount of the participation held by that holder.

Section 2.17. Making or Maintaining LIBOR Loans.

(a) Inability to Determine Applicable Interest Rate. In the event that (x) the Administrative Agent shall have determined (which determination shall be final and conclusive and

binding upon all parties hereto absent manifest error), on any Interest Rate Determination Date with respect to any LIBOR Loans or any ABR Loans as to which the interest rate is determined with reference to the Adjusted LIBO Rate, that by reason of circumstances affecting the London interbank market adequate and fair means do not exist for ascertaining the interest rate applicable to such Loans on the basis provided for in the definition of Adjusted LIBO Rate, or (y) prior to the commencement of any Interest Period with respect to LIBOR Loans or ABR Loans as to which the interest rate is determined with reference to the Adjusted LIBO Rate, the Administrative Agent is advised by the Required Lenders that the Adjusted LIBO Rate for such Interest Period will not adequately and fairly reflect the cost to such Lenders of making or maintaining such LIBOR Loans or such ABR Loans for such Interest Period, the Administrative Agent shall on such date give notice (by facsimile or by telephone confirmed in writing) to the Borrower and each Lender of such determination, whereupon (i) no Loans may be made as, or converted to, LIBOR Loans and the Alternate Base Rate shall be determined without regard to clause (c) of the definition thereof until such time as the Administrative Agent notifies the Borrower and Lenders that the circumstances giving rise to such notice no longer exist, and (ii) any Funding Notice or Conversion/Continuation Notice given by the Borrower with respect to the continuation of or conversion to LIBOR Loans in respect of which such determination was made shall be deemed to be rescinded by the Borrower.

(b) Illegality or Impracticability of LIBOR Loans. In the event that on any date any Lender shall have determined (which determination shall be final and conclusive and binding upon all parties hereto (absent manifest error) but shall be made only after consultation with the Borrower and the Administrative Agent) that the making, maintaining or continuation of its LIBOR Loans (i) has become unlawful as a result of compliance by such Lender in good faith with any law, treaty, governmental rule, regulation, guideline or order (or would conflict with any such treaty, governmental rule, regulation, guideline or order not having the force of law even though the failure to comply therewith would not be unlawful), or (ii) has become impracticable, as a result of contingencies occurring after the date hereof which materially and adversely affect the London interbank market or the position of such Lender in that market, then, and in any such event, such Lender shall be an "Affected Lender" and it shall on that day give notice (by facsimile or by telephone confirmed in writing) to the Borrower and the Administrative Agent of such determination (which notice the Administrative Agent shall promptly transmit to each other Lender). Thereafter (1) the obligation of the Affected Lender to make Loans as, or to convert Loans to, LIBOR Loans shall be suspended and ABR Loans shall be determined without reference to clause (c) of the definition thereof, until such notice shall be withdrawn by the Affected Lender, (2) to the extent such determination by the Affected Lender relates to a LIBOR Loan then being requested by the Borrower pursuant to a Funding Notice or a Conversion/Continuation Notice, the Affected Lender shall make such Loan as (or continue such Loan as or convert such Loan to, as the case may be) an ABR Loan as to which the interest rate is not determined with reference to the Adjusted LIBO Rate, (3) the Affected Lender's obligation to maintain its outstanding LIBOR Loans (the "Affected Loans") shall be terminated at the earlier to occur of the expiration of the Interest Period then in effect with respect to the Affected Loans or when required by law, and (4) the Affected Loans shall automatically convert into ABR Loans as to which the interest rate is not determined with reference to the Adjusted LIBO Rate on the date of such termination. Notwithstanding the foregoing, to the extent a determination by an Affected Lender as described above relates to a LIBOR Loan then being requested by the Borrower pursuant to a Funding Notice or a Conversion/Continuation Notice, the

Borrower shall have the option, subject to the provisions of Section 2.17(c), to rescind such Funding Notice or Conversion/Continuation Notice as to all Lenders by giving notice (by facsimile or by telephone confirmed in writing) to the Administrative Agent of such rescission on the date on which the Affected Lender gives notice of its determination as described above (which notice of rescission the Administrative Agent shall promptly transmit to each other Lender). Except as provided in the immediately preceding sentence, nothing in this Section 2.17(b) shall affect the obligation of any Lender other than an Affected Lender to make or maintain Loans as, or to convert Loans to, LIBOR Loans or ABR Loans as to which the interest rate is determined with reference to the Adjusted LIBO Rate in accordance with the terms hereof.

(c) Indemnity for Breakage or Non-Commencement of Interest Periods. The Borrower shall indemnify each Lender against any loss or expense that such Lender may sustain or incur as a consequence of (i) any event, other than a default by such Lender in the performance of its obligations hereunder, which results in (A) such Lender receiving or being deemed to receive any amount on account of the principal of any LIBOR Loan prior to the end of the Interest Period in effect therefor, (B) the conversion of any LIBOR Loan to an ABR Loan, or the conversion of the Interest Period with respect to any LIBOR Loan, in each case other than on the last day of the Interest Period in effect therefor or (C) a borrowing of any LIBOR Loan not occurring on a date specified therefor in a Funding Notice or a conversion to or continuation of any LIBOR Loan not occurring on a date specified therefor in a Conversion/Continuation Notice (any of the events referred to in this clause (i) being called a "Breakage Event") or (ii) any default in the making of any payment or prepayment required to be made hereunder. In the case of any Breakage Event, such loss shall include an amount equal to the excess, as reasonably determined by such Lender, of (A) its cost of obtaining funds for the LIBOR Loan that is the subject of such Breakage Event for the period from the date of such Breakage Event to the last day of the Interest Period in effect (or that would have been in effect) for such Loan over (B) the amount of interest likely to be realized by such Lender in redeploying the funds released or not utilized by reason of such Breakage Event for such period. A certificate of any Lender setting forth in reasonable detail any amount or amounts which such Lender is entitled to receive pursuant to this Section 2.17(c) shall be delivered to the Borrower and shall be conclusive absent manifest error.

Section 2.18. Reserve Requirements; Change in Circumstances.

(a) If any Change in Law shall:

(i) impose, modify or deem applicable any reserve, special deposit, compulsory loan, insurance charge, liquidity or similar requirement against assets of, deposits with or for the account of, or credit extended or participated in by, any Lender (except any reserve requirement reflected in the Adjusted LIBO Rate);

(ii) subject any Recipient to any Taxes (other than Indemnified Taxes and Excluded Taxes) on its Loans, principal, Commitments or other Obligations, or its deposits, reserves, other liabilities or capital attributable thereto; or

(iii) impose on any Lender or the London interbank market any other condition, cost or expense (other than Taxes) affecting this Agreement or Loans made by such Lender;

and the result of any of the foregoing shall be to increase the cost to such Lender or such other Recipient, of making, converting to, continuing or maintaining any LIBOR Loan, or to reduce the amount of any sum received or receivable by such Lender or such other Recipient hereunder (whether of principal, interest or any other amount) then, upon the request of such Lender or such other Recipient, the Borrower will pay to such Lender or such other Recipient, as the case may be, such additional amount or amounts as will compensate such Lender or such other Recipient, as the case may be, for such additional costs incurred or reduction suffered. If any Lender or other Recipient becomes entitled to claim any additional amounts pursuant to this Section 2.18, it shall notify the Borrower (with a copy to the Administrative Agent) of the event by reason of which it has become so entitled.

(b) If any Lender determines in good faith that any Change in Law affecting such Lender or any lending office of such Lender or such Lender's holding company, if any, regarding capital or liquidity requirements, has or would have the effect of reducing the rate of return on such Lender's capital or on the capital of such Lender's holding company, if any, as a consequence of this Agreement, the Commitments of such Lender or the Loans made by such Lender to a level below that which such Lender or such Lender's holding company could have achieved but for such Change in Law (taking into consideration such Lender's policies and the policies of such Lender's holding company with respect to capital adequacy), then from time to time after submission by such Lender to the Borrower (with a copy to the Administrative Agent) of a written request therefor the Borrower will pay to such Lender such additional amount or amounts as will compensate such Lender or such Lender's holding company for any such reduction suffered.

(c) A certificate of a Lender setting forth in reasonable detail the amount or amounts necessary to compensate such Lender or its holding company, as the case may be, as specified in Section 2.18(a) or Section 2.18(b) and delivered to the Borrower (with a copy to the Administrative Agent), shall be conclusive absent manifest error. The Borrower shall pay such Lender the amount shown as due on any such certificate within ten (10) Business Days after receipt thereof.

(d) Failure or delay on the part of any Lender to demand compensation pursuant to this Section 2.18 shall not constitute a waiver of such Lender's right to demand such compensation; provided that the Borrower shall not be required to compensate a Lender pursuant to this Section 2.18 for any increased costs incurred or reductions suffered more than one hundred eighty (180) days prior to the date that such Lender notifies the Borrower of the Change in Law giving rise to such increased costs or reductions, and of such Lender's intention to claim compensation therefor (except that, if the Change in Law giving rise to such increased costs or reductions is retroactive, then the one hundred eighty (180) day period referred to above shall be extended to include the period of retroactive effect thereof).

(e) The obligations of the Borrower pursuant to this Section 2.18 shall survive the termination of this Agreement and the payment of the Loans and all other amounts payable hereunder.

Section 2.19. Taxes.

(a) Any and all payments by or on account of any obligation of the Borrower or any other Company under this Agreement or under any other Loan Document shall be made free and

clear of and without deduction for any Indemnified Taxes or Other Taxes, except as required by applicable law; provided that if any applicable law requires the deduction or withholding of any Tax from any such payment, then (i) the Borrower, such other Company or the Administrative Agent, as applicable, shall be entitled to make such deduction or withholding as it reasonably determines and shall timely pay the full amount deducted to the relevant Governmental Authority in accordance with applicable law, and (ii) if such Tax is an Indemnified Tax or Other Tax, then the sum payable by the Borrower or such other Company shall be increased as necessary so that after making all required deductions or withholding (including deductions or withholdings applicable to additional sums payable under this Section 2.19) the Administrative Agent or the applicable Lender (as the case may be) receives an amount equal to the sum it would have received had no such deductions or withholdings been made. In addition, without limiting the foregoing provisions, the Borrower or any other Company hereunder or under any other Loan Document shall timely pay (or cause to be timely paid) any Other Taxes to the relevant Governmental Authority in accordance with applicable law, or, at the option of the Administrative Agent, timely reimburse it for the payment of any Other Taxes.

(b) The Borrower shall indemnify the Administrative Agent and each Lender, within fifteen (15) days after written demand therefor, for the full amount of any Indemnified Taxes or Other Taxes paid or payable by the Administrative Agent or such Lender, as the case may be, or any of their respective Affiliates, on or with respect to any payment by or on account of any obligation of the Borrower or any Company hereunder or under any other Loan Document (including Indemnified Taxes or Other Taxes imposed or asserted on or attributable to amounts payable under this Section 2.19) and any reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes or Other Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate setting forth in reasonable detail the amount of such payment or liability delivered to the Borrower by a Lender, or by the Administrative Agent on its own behalf or on behalf of a Lender, shall be conclusive absent manifest error. Notwithstanding the foregoing, the Borrower shall not be obliged to indemnify a Lender or the Administrative Agent pursuant to this Section 2.19(b) with respect to any interest, penalties or expenses accrued during any period prior to the date that is two hundred seventy (270) days prior to the date of written demand for such indemnification if such Lender or the Administrative Agent had actual knowledge of the circumstances giving rise to such interest, penalties or expenses and of the fact that such circumstances would result in a claim for such indemnification; provided, that the foregoing limitation shall not apply to any interest, penalties or expenses arising out of the retroactive application of any Change in Law within such 270-day period.

(c) As soon as practicable after any payment of Taxes by the Borrower, any other Company or the Administrative Agent to a Governmental Authority pursuant to this Section 2.19, the Borrower shall deliver (or cause to be delivered) to the Administrative Agent if such payment was made by the Borrower or any other Company or, at the request of the Borrower and if such payment was made by the Administrative Agent, the Administrative Agent shall deliver to the Borrower, the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to the Administrative Agent or the Borrower, as the case may be.

(d) Each Lender shall severally indemnify the Administrative Agent, within 15 days after demand therefor, for (i) any Indemnified Taxes or Other Taxes attributable to such Lender (but only to the extent that the Borrower or any Company has not already indemnified the Administrative Agent for such Indemnified Taxes or Other Taxes and without limiting the obligation of the Borrower to do so), (ii) any Taxes attributable to such Lender's failure to comply with the provisions of Section 9.04 relating to the maintenance of a Participant Register and (iii) any Excluded Taxes attributable to such Lender, in each case, that are payable or paid by the Administrative Agent in connection with any Loan Document, and any reasonable expenses arising therefrom or with respect thereto, whether or not such Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to any Lender by the Administrative Agent shall be conclusive absent manifest error. Each Lender hereby authorizes the Administrative Agent to set off and apply any and all amounts at any time owing to such Lender under any Loan Document or otherwise payable by the Administrative Agent to the Lender from any other source against any amount due to the Administrative Agent under this clause (d).

(e) (i) Any Lender that is entitled to an exemption from or reduction of withholding Tax with respect to payments made under any Loan Document shall deliver to the Borrower and the Administrative Agent, at the time or times reasonably requested by the Borrower or the Administrative Agent, such properly completed and executed documentation reasonably requested by the Borrower or the Administrative Agent as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, any Lender, if reasonably requested by the Borrower or the Administrative Agent, shall deliver such other documentation prescribed by applicable law or reasonably requested by the Borrower or the Administrative Agent as will enable the Borrower or the Administrative Agent to determine whether or not such Lender is subject to backup withholding or information reporting requirements. Notwithstanding anything to the contrary in the preceding two sentences, the completion, execution and submission of such documentation (other than such documentation set forth in Section 2.19(e)(ii)(A), (ii)(B) and (ii)(D) below) shall not be required if in the Lender's reasonable judgment such completion, execution or submission would subject such Lender to any material unreimbursed cost or expense or would materially prejudice the legal or commercial position of such Lender.

(ii) Without limiting the generality of the foregoing,

(A) any Lender that is not a Foreign Lender shall deliver to the Borrower and the Administrative Agent on or prior to the date on which such Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), executed copies of IRS Form W-9 certifying that such Lender is exempt from U.S. federal backup withholding tax;

(B) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to the Borrower and the Administrative Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), whichever of the following is applicable:

(1) in the case of a Foreign Lender claiming the benefits of an income tax treaty to which the United States is a party (x) with respect to payments of interest under any Loan Document, executed copies of IRS Form W-8BEN or W-8BEN-E establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the "interest" article of such tax treaty and (y) with respect to any other applicable payments under any Loan Document, IRS Form W-8BEN or W-8BEN-E establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the "business profits" or "other income" article of such tax treaty;

(2) executed copies of IRS Form W-8ECI;

(3) in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under Section 881(c) of the Tax Code, (x) a certificate substantially in the form of Exhibit I-1 to the effect that such Foreign Lender is not a "bank" within the meaning of Section 881(c)(3)(A) of the Tax Code, a "10 percent shareholder" of the Borrower within the meaning of Section 881(c)(3)(B) of the Tax Code, or a "controlled foreign corporation" described in Section 881(c)(3)(C) of the Tax Code (a "U.S. Tax Compliance Certificate") and (y) executed copies of IRS Form W-8BEN or W-8BEN-E; or

(4) to the extent a Foreign Lender is not the beneficial owner, executed copies of IRS Form W-8IMY, accompanied by IRS Form W-8ECI, IRS Form W-8BEN or W-8BEN-E, a U.S. Tax Compliance Certificate substantially in the form of Exhibit I-2 or Exhibit I-3, IRS Form W-9, and/or other certification documents from each beneficial owner, as applicable; provided that if the Foreign Lender is a partnership and one or more direct or indirect partners of such Foreign Lender are claiming the portfolio interest exemption, such Foreign Lender may provide a U.S. Tax Compliance Certificate substantially in the form of Exhibit I-4 on behalf of each such direct and indirect partner;

(C) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to the Borrower and the Administrative Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), executed copies of any other form prescribed by applicable law as a basis for claiming exemption from or a reduction in U.S. federal withholding Tax, duly completed, together with such supplementary documentation as may be prescribed by applicable law to permit the Borrower or the Administrative Agent to determine the withholding or deduction required to be made; and

(D) if a payment made to a Lender under any Loan Document would be subject to U.S. federal withholding Tax imposed by FATCA if such Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in

Section 1471(b) or 1472(b) of the Tax Code, as applicable), such Lender shall deliver to the Borrower and the Administrative Agent at the time or times prescribed by law and at such time or times reasonably requested by the Borrower or the Administrative Agent such documentation prescribed by applicable law (including as prescribed by Section 1471(b)(3)(C)(i) of the Tax Code) and such additional documentation reasonably requested by the Borrower or the Administrative Agent as may be necessary for the Borrower and the Administrative Agent to comply with their obligations under FATCA and to determine that such Lender has complied with such Lender's obligations under FATCA or to determine the amount to deduct and withhold from such payment. Solely for purposes of this clause (D), "FATCA" shall include any amendments made to FATCA after the date of this Agreement.

Each Lender agrees that if any form or certification it previously delivered expires or becomes obsolete or inaccurate in any respect, it shall update such form or certification or promptly notify the Borrower and the Administrative Agent in writing of its legal inability to do so.

(f) In addition, each Administrative Agent (and any Person succeeding the Administrative Agent upon assignment or succession, if applicable) shall deliver to the Borrower, prior to (A) the date on which the first payment by the Borrower is due hereunder or (B) the first date on or after the date on which such Administrative Agent becomes a successor Administrative Agent on which payment by the Borrower is due hereunder, as applicable, two duly executed copies of (I) IRS Form W-9 certifying its exemption from U.S. federal backup withholding, (II) IRS Form W-8ECI certifying its exemption from U.S. federal backup withholding, or (III) IRS Form W-8IMY certifying that the Administrative Agent is a U.S. branch and intends to be treated as a U.S. person for purposes of withholding under Chapter 3 of the Tax Code pursuant to Section 1.1441-1(b)(2)(iv) of the Treasury regulations promulgated under the Tax Code, as applicable. On or before the date on which any such previously delivered documentation expires or becomes obsolete or invalid, after the occurrence of any event requiring a change in the most recent documentation previously delivered by it to the Borrower, and from time to time if reasonably requested by the Borrower, the Administrative Agent shall deliver to the Borrower two further copies of such applicable documentation. Notwithstanding the foregoing, the Administrative Agent (and any Person succeeding the Administrative Agent upon assignment or succession, if applicable) shall not be required to deliver any tax form or documentation it is not legally entitled to deliver.

(g) If the Administrative Agent or a Lender determines, in its sole discretion, that it has received a refund of any Indemnified Taxes or Other Taxes as to which it has been indemnified by the Borrower or any Company or with respect to which the Borrower or any Company has paid additional amounts pursuant to this Section 2.19, it shall pay to the Borrower or such Company an amount equal to such refund (but only to the extent of indemnity payments made, or additional amounts paid, by the Borrower or such Company under this Section 2.19 with respect to the Indemnified Taxes or Other Taxes giving rise to such refund), net of all out-of-pocket expenses (including Taxes) of the Administrative Agent or such Lender, as the case may be, and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund); provided that the Borrower, upon the request of the Administrative Agent or such Lender, agrees to repay as soon as reasonably practicable the amount paid over to the Borrower or such Company (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) to the Administrative Agent or such Lender in the event the Administrative Agent or

such Lender is required to repay such refund to such Governmental Authority. In such event, such Lender or the Administrative Agent, as the case may be, shall, at the Borrower's request, provide the Borrower with a copy of any notice of assessment or other evidence of the requirement to repay such refund received from the relevant Governmental Authority (provided that such Lender or the Administrative Agent may delete any information therein that it deems confidential). Notwithstanding anything to the contrary in this Section 2.19(g), in no event will the Administrative Agent or any Lender be required to pay any amount to the Borrower or any Company pursuant to this Section 2.19(g) the payment of which would place the Administrative Agent or such Lender in a less favorable net after-Tax position than the Administrative Agent or such Lender would have been in if the Tax subject to indemnification and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts with respect to such Tax had never been paid. This Section 2.19(g) shall not be construed to require the Administrative Agent or any Lender to make available its tax returns (or any other information relating to its taxes that it deems confidential) to the Borrower or any other Person.

(h) If the Borrower determines that a reasonable basis exists for contesting an Indemnified Tax or Other Tax for which a Loan Party has paid additional amounts or indemnification payments, each affected Lender or Administrative Agent, as the case may be, shall use commercially reasonable efforts to cooperate with the Borrower as the Borrower may reasonably request in writing in challenging such Tax. The Borrower shall indemnify and hold each Lender and Administrative Agent harmless against any reasonable expenses incurred by such person in connection with any request made by the Borrower pursuant to this Section 2.19(h). Nothing in this Section 2.19(h) shall obligate any Lender or Administrative Agent to take any action that such Person, in its sole judgment, determines may result in a material detriment to such Person or is otherwise inconsistent with the internal policies of such Person or any applicable legal or regulatory restrictions. Any resulting refund shall be governed by Section 2.19(g).

(i) Without prejudice to the survival of any other agreement of the parties hereunder, the agreements and obligations of the parties contained in this Section 2.19 shall survive termination of this Agreement and the payment in full of the Obligations and all other amounts payable under any Loan Document, the resignation or replacement of the Administrative Agent or any assignment of rights by, or replacement of, any Lender.

(j) For purposes of this Section 2.19, any reference to "applicable law" shall include FATCA.

Section 2.20. Obligation to Mitigate. Each Lender agrees that, as promptly as practicable after the officer of such Lender responsible for administering its Loans becomes aware of the occurrence of an event or the existence of a condition that would cause such Lender to become an Affected Lender or that would entitle such Lender to receive payments under Section 2.17, Section 2.18 or Section 2.19, it will, to the extent not inconsistent with the internal policies of such Lender and any applicable legal or regulatory restrictions, use reasonable efforts (at the request of the Borrower so long as the Borrower has received notice of such occurrence or existence) to (a) make, issue, fund or maintain its Credit Extensions, including any Affected Loans, through another office of such Lender, or (b) take such other measures as such Lender may deem reasonable, if as a result

thereof the circumstances which would cause such Lender to be an Affected Lender would cease to exist or the additional amounts which would otherwise be required to be paid to such Lender pursuant to Section 2.17, Section 2.18 or Section 2.19 would be reduced and if, as determined by such Lender in good faith but in its sole discretion, the making, issuing, funding or maintaining of its Commitments or Loans through such other office or in accordance with such other measures, as the case may be, (i) would not subject such Lender to any unreimbursed cost or expense and (ii) would not, in the sole discretion of such Lender, be otherwise disadvantageous to such Lender; provided that such Lender will not be obligated to utilize such other office pursuant to this Section 2.20 unless the Borrower agrees to pay all incremental expenses incurred by such Lender as a result of utilizing such other office as described in clause (a) above. A certificate as to the amount of any such expenses payable by the Borrower pursuant to this Section 2.20 (setting forth in reasonable detail the basis for requesting such amount) submitted by such Lender to the Borrower (with a copy to the Administrative Agent) shall be conclusive absent manifest error.

Section 2.21. Defaulting Lenders.

(a) Defaulting Lender Adjustments. Notwithstanding anything to the contrary contained in this Agreement, if any Lender becomes a Defaulting Lender, then, until such time as such Lender is no longer a Defaulting Lender, to the extent permitted by applicable law:

(i) Waivers and Amendments. Such Defaulting Lender's right to approve or disapprove any amendment, waiver or consent with respect to this Agreement shall be restricted as set forth in the definition of Required Class Lenders and Required Lenders.

(ii) Defaulting Lender Waterfall. Any payment of principal, interest, Fees or other amounts received by the Administrative Agent for the account of such Defaulting Lender (whether voluntary or mandatory, at maturity, pursuant to Article VII or otherwise) or received by the Administrative Agent from a Defaulting Lender pursuant to Section 9.06 shall be applied at such time or times as may be determined by the Administrative Agent as follows: *first*, to the payment of any amounts owing by such Defaulting Lender to the Administrative Agent hereunder; *second*, as the Borrower may request (so long as no Default under Section 7.01(c) or Section 7.01(h)) nor any Event of Default has occurred and is continuing), to the funding of any Loan in respect of which such Defaulting Lender has failed to fund its portion thereof as required by this Agreement, as determined by the Administrative Agent; *third*, if so determined by the Administrative Agent and the Borrower, to be held in a deposit account and released pro rata in order to satisfy such Defaulting Lender's potential future funding obligations with respect to Loans under this Agreement; *fourth*, to the payment of any amounts owing to the Lenders as a result of any judgment of a court of competent jurisdiction obtained by any Lender against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; *fifth*, so long as no Default under Section 7.01(c) or (h) nor any Event of Default has occurred and is continuing, to the payment of any amounts owing to the Borrower as a result of any judgment of a court of competent jurisdiction obtained by the Borrower against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; and *sixth*, to such Defaulting Lender or as otherwise directed by a court of competent jurisdiction; provided that if (x) such payment is

a payment of the principal amount of any Loans in respect of which such Defaulting Lender has not fully funded its appropriate share, and (y) such Loans were made at a time when the conditions set forth in Section 4.02 were satisfied or waived, such payment shall be applied solely to pay the Loans of all Non-Defaulting Lenders on a pro rata basis prior to being applied to the payment of any Loans of such Defaulting Lender until such time as all Loans are held by the Lenders pro rata. Any payments, prepayments or other amounts paid or payable to a Defaulting Lender that are applied (or held) to pay amounts owed by a Defaulting Lender pursuant to this Section 2.21(a)(i) shall be deemed paid to and redirected by such Defaulting Lender, and each Lender irrevocably consents hereto.

(iii) Certain Fees. No Defaulting Lender shall be entitled to receive the commitment fees described in Section 2.10(b) for any period during which that Lender is a Defaulting Lender (and the Borrower shall not be required to pay any such fee that otherwise would have been required to have been paid to that Defaulting Lender).

(b) Defaulting Lender Cure. If the Borrower and the Administrative Agent agree in writing that a Lender is no longer a Defaulting Lender, the Administrative Agent will so notify the parties hereto, whereupon as of the effective date specified in such notice and subject to any conditions set forth therein, that Lender will, to the extent applicable, purchase at par that portion of outstanding Loans of the other Lenders or take such other actions as the Administrative Agent may determine to be necessary to cause the Loans to be held pro rata by the Lenders in accordance with the Commitments under the Facility, whereupon such Lender will cease to be a Defaulting Lender; provided that no adjustments will be made retroactively with respect to Fees accrued or payments made by or on behalf of the Borrower while that Lender was a Defaulting Lender; and provided, further, that except to the extent otherwise expressly agreed by the affected parties, no change hereunder from Defaulting Lender to Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender's having been a Defaulting Lender.

Section 2.22. Removal or Replacement of a Lender. Anything contained herein to the contrary notwithstanding, in the event that: (a) (i) any Lender (an "Increased-Cost Lender") shall give notice to the Borrower that such Lender is an Affected Lender or that such Lender is entitled to receive payments under Section 2.17 (other than Section 2.17(c)), Section 2.18 or Section 2.19, (ii) the circumstances which entitle such Lender to receive such payments shall remain in effect, and (iii) such Lender shall fail to withdraw such notice within five (5) Business Days after the Borrower's request for such withdrawal; (b) any Lender is a Defaulting Lender; or (c) in connection with any proposed amendment, modification, termination, waiver or consent with respect to any of the provisions of this Agreement that requires the consent of 100% of the Lenders of a particular Class or 100% of the Lenders directly affected thereby as contemplated by Section 9.08(b), the consent of the Lenders collectively having Aggregate Exposure representing more than 50% of the Aggregate Exposure of all Lenders required to consent to such matter shall have been obtained but the consent of one or more of such other Lenders (each a "Non-Consenting Lender") whose consent is required shall not have been obtained; then, with respect to each such Increased-Cost Lender, Defaulting Lender or Non-Consenting Lender (the "Terminated Lender"), the Borrower may, by giving written notice to the Administrative Agent and any Terminated Lender of its election to do so, elect to cause such Terminated Lender (and such Terminated Lender hereby irrevocably agrees)

to assign its outstanding Loans and Commitments, if any, in full to one or more Eligible Assignees (each a "Replacement Lender") in accordance with the provisions of Section 9.04 (provided that in the event such Terminated Lender does not execute an Assignment and Acceptance within five (5) Business Days after having received a request therefor, such Terminated Lender shall be deemed to have consented to such Assignment and Acceptance) and the Borrower shall pay any reasonable fees payable thereunder in connection with such assignment (including any processing or recordation fees payable to the Administrative Agent pursuant to Section 9.04(c)); provided, (1) on the date of such assignment, the Replacement Lender shall pay to the Terminated Lender an amount equal to the sum of (A) an amount equal to the principal of, and all accrued interest on, all outstanding Loans of the Terminated Lender and (B) an amount equal to all accrued, but theretofore unpaid Fees owing to such Terminated Lender pursuant to Section 2.10; (2) on the date of such assignment, the Borrower shall pay any amounts payable to such Terminated Lender pursuant to Section 2.17(c), Section 2.18 or Section 2.19 or otherwise as if it were a prepayment (including, in the case of a Terminated Lender (other than a Defaulting Lender), any repayment premiums pursuant to Section 2.12(c)) and (3) in the event such Terminated Lender is a Non-Consenting Lender, each Replacement Lender shall consent, at the time of such assignment, to each matter in respect of which such Terminated Lender was a Non-Consenting Lender. Upon the prepayment of all amounts owing to any Terminated Lender and the termination of such Terminated Lender's undrawn Commitments, if any, such Terminated Lender shall no longer constitute a "Lender" for purposes hereof; provided, any rights of such Terminated Lender to indemnification hereunder shall survive as to such Terminated Lender.

ARTICLE III.

REPRESENTATIONS AND WARRANTIES

The Borrower represents and warrants to the Lead Arranger, the Agents and each of the Lenders that:

Section 3.01. Organization; Powers. Each of the Loan Parties (a) is duly organized or formed, validly existing and in good standing under the laws of the jurisdiction of its organization or formation, (b) has all requisite power and authority to own and operate its property and assets, to lease the property it operates as lessee and to carry on its business as now conducted and as proposed to be conducted, (c) is qualified to do business in, and is in good standing in, every jurisdiction where such qualification is required, except where the failure to so qualify, individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect and (d) has the power and authority to execute, deliver and perform its obligations under each Loan Document and each Material Contract, in each case to which it is or will be a party, including, in the case of the Borrower, to borrow hereunder, in the case of each Loan Party, to grant the Liens contemplated to be granted by it under the Security Documents, in the case of each Subsidiary Guarantor and the Borrower, to Guarantee the Obligations as contemplated by the Subsidiary Guaranty, and, in the case of the Completion Guarantor, to make the guarantees and incur the other obligations set forth in the Completion Guaranty.

Section 3.02. Authorization; No Conflicts. The Transactions (a) have been duly authorized by all requisite corporate, partnership or limited liability company and, if required, stockholder, partner or member action of each Loan Party and (b) will not (i) violate (A) any

provision of law, statute, rule or regulation in any material respect, (B) any Governing Document of any Loan Party, (C) any order of any Governmental Authority or arbitrator or (D) any Contractual Obligation of any Loan Party which, in the case of this clause (D) only, could reasonably be expected to have a Material Adverse Effect, (ii) be in conflict with, result in a breach of or constitute (alone or with notice or lapse of time or both) a default under, or give rise to any right to accelerate or to require the prepayment, repurchase or redemption of any obligation under any Contractual Obligation of any Loan Party which, in the case of this clause (ii) only, could reasonably be expected to have a Material Adverse Effect or (iii) result in the creation or imposition of any Lien upon or with respect to any property or assets now owned or hereafter acquired by any Loan Party (other than Liens created under the Security Documents and the Revolving Facility Documents (subject to the Intercreditor Agreement)).

Section 3.03. **Enforceability**. This Agreement has been duly executed and delivered by the Borrower and constitutes, and each other Loan Document and Material Contract when executed and delivered by each of the Loan Parties that are party thereto will constitute, a legal, valid and binding obligation of such Person enforceable against such Person in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting creditors' rights generally and subject to general principles of equity, regardless of whether considered in a proceeding in equity or at law.

Section 3.04. **Governmental and other Approvals**. No consent or approval of, registration or filing with, Permit from, notice to, or any other action by, any Governmental Authority or third party is or will be required in connection with (a) the execution, delivery or performance by, or enforcement against, any Loan Party of this Agreement or any other Loan Document or for the consummation of the Transactions or for the validity or enforceability of the Loan Documents, (b) the grant by any Loan Party of the Liens granted by it pursuant to the Security Documents, (c) the perfection or maintenance of the Liens created under the Security Documents (including the first priority nature thereof, subject to Senior Permitted Liens) or (d) the exercise by the Administrative Agent or any Lender of its rights under the Loan Documents or the remedies in respect of the Collateral pursuant to the Security Documents, except for (i) the filing of UCC financing statements and filings with the United States Patent and Trademark Office and the United States Copyright Office, (ii) recordation of the Mortgages and Assignments of Leases and Rents, (iii) such consents, approvals, registrations, filings, Permits, notices or other actions (including all Gaming Licenses and other necessary regulatory and gaming approvals and shareholder approvals) as have been made or obtained and are in full force and effect or are set forth on Schedule 3.04, (iv) approvals, consents, registrations, filings, authorization or Permits required from any Governmental Authority, including Gaming Authorities, in connection with an exercise of remedies under any of the Loan Documents (including as contemplated by Section 9.28) and (v) in the case of clause (d) above, as otherwise set forth in the Intercreditor Agreement.

Section 3.05. **Financial Statements; Absence of Undisclosed Liabilities**. All financial statements delivered pursuant to Section 5.01(b) and Section 5.01(c) present fairly in all material respects the financial condition and results of operations and cash flows of the applicable Persons as of such dates and for such periods. Such financial statements were prepared in accordance with GAAP consistently applied (taking into account changes in GAAP during such period) through the

applicable period except for the absence of footnotes and year-end adjustments for any financial statements other than those prepared for a Fiscal Year end.

Section 3.06. **No Material Adverse Change**. No event, change or condition has occurred since the Closing Date, that has caused, or could reasonably be expected to cause, either individually or when taken together with any other events, changes or conditions, a Material Adverse Effect.

Section 3.07. **Title to Properties; Possession Under Leases**.

(a) Each of the Loan Parties has good title to, or valid leasehold interests in, all its material properties and assets (including all Real Property), except as set forth on the title policies delivered pursuant to Section 4.01(l), Section 5.11 or Section 5.12, and except for Permitted Liens. Each parcel of Real Property is free from defects that materially and adversely affect, or could reasonably be expected to materially and adversely affect, such parcel's suitability for the purposes for which it is contemplated to be used under the Loan Documents and the Project Documents. Each parcel of Real Property and the use thereof (both presently and as contemplated under the Loan Documents and the Project Documents) complies with all applicable laws (including building and zoning ordinances and codes (but excluding those applicable laws subject to Section 3.17)) and with all insurance requirements, except for any non-compliance which could not reasonably be expected to have a Material Adverse Effect.

(b) Each of the Loan Parties, and, to the knowledge of the Borrower, each other party thereto, has complied with all obligations under all leases of Real Property to which it is a party and all such leases are legal, valid, binding and in full force and effect and are enforceable against the Loan Parties party thereto and, to the Borrower's knowledge, against each other party thereto in accordance with their terms except, in each case, to the extent any such non-compliance or unenforceability could not reasonably be expected to have a Material Adverse Effect. Each of the Loan Parties enjoys peaceful and undisturbed possession under all such material leases pursuant to which a Loan Party is the tenant or subtenant, if any. Except to the extent constituting a Permitted Lien, no claim is being asserted or, to the knowledge of the Borrower, threatened, in writing with respect to any lease payment under any lease pursuant to which a Loan Party is the tenant or subtenant, if any, except any claim which could not reasonably be expected to have a Material Adverse Effect. Other than as set forth on Schedule 3.07, the IDA Documents and space leases otherwise permitted pursuant to the Loan Documents or pursuant to the applicable Permitted Liens, none of the Real Property is subject to any lease, sublease, license or other agreement pursuant to which any Loan Party has granted to any Person any material right to the use, occupancy, possession or enjoyment of the Real Property or any portion thereof. The Borrower has delivered to the Administrative Agent true, complete and correct copies of all leases (whether as landlord or tenant) of Real Property.

(c) None of the Loan Parties has received any written notice of, nor has any knowledge of, any pending or contemplated condemnation proceeding affecting any material portion of any Real Property or any sale or disposition of any material portion of any Real Property in lieu of condemnation.

(d) Other than as described on Schedule 3.07 or as permitted pursuant to Section 6.09, none of the Loan Parties is obligated under any written right of first refusal, option or other contractual right to sell, assign or otherwise dispose of any material portion of any Real Property or any interest therein.

(e) None of the Loan Parties has suffered, permitted or initiated the joint assessment of any Real Property owned by such Person with any other real property owned by another Person and constituting a separate tax lot. Each owned parcel of Real Property is comprised of one or more parcels, each of which constitutes a separate tax lot and none of which constitutes a portion of any other tax lot.

(f) (i) Each parcel of Real Property has adequate rights of access to public ways or irrevocable and perpetual recorded rights of way or easements to public rights of way to permit the Real Property to be used for its intended purpose (as contemplated under the Loan Documents and the Project Documents) and is (or will be when required for the construction or operation of the Project) served by installed, operating and adequate water, electric, gas, telephone, sewer, sanitary sewer, storm drain facilities and other public utilities necessary for the uses contemplated under the Loan Documents and the Project Documents; (ii) all public utilities necessary to the use and enjoyment of each parcel of Real Property as contemplated under the Loan Documents and the Project Documents are (or will be when required for the construction or operation of the Project) located in the public right of way abutting the premises, and all such utilities are (or will be when required for the construction or operation of the Project) connected so as to serve such Real Property without passing over other Property except pursuant to recorded easements, for land of the utility company providing such utility service or, in the case of leased Real Property, contiguous land owned by the lessor of such leased Real Property; (iii) each parcel of Real Property, including each leased parcel, has (or will have, when required for the construction or operation of the Project) adequate available parking to meet applicable legal and operating requirements; and (iv) other than Permitted Liens, no building or structure upon any Real Property or any material appurtenance thereto or material equipment thereon, or the use, operation or maintenance thereof, violates any restrictive covenant or encroaches on any easement or on any Property owned by others, which violation or encroachment materially interferes with the current use or could materially adversely affect the value of such building, structure or appurtenance.

(g) Notwithstanding anything in this Agreement to the contrary, for purposes of this Section 3.07 only, the Excluded Leased Real Property and any other immaterial Real Property not subject to a Mortgage shall not be deemed to constitute Real Property.

Section 3.08. Subsidiaries. Schedule 3.08 sets forth, as of the Closing Date, a list of the Borrower and all Subsidiaries of any Loan Party, including the Borrower's and each such Subsidiary's exact legal name (as reflected in the Borrower's and such Subsidiary's certificate or articles of incorporation, organization or other constitutive documents) and jurisdiction of incorporation or formation and the percentage ownership interest of each Person, as applicable, therein. As of the Closing Date, the Capital Stock so indicated on Schedule 3.08 is fully paid and non-assessable and is owned by each Person described on such schedule, as applicable, free and clear of all Liens (other than Liens created under the Security Documents and the Revolving Facility

Documents (subject to the Intercreditor Agreement)). The Equity Pledgor owns 100% of the Capital Stock in the Borrower, free and clear of all Liens (other than Liens created under the Equity Pledge Agreement, Permitted Liens (as defined in the Equity Pledge Agreement) and the Liens created under the Revolving Facility Documents (subject to the Intercreditor Agreement)), and all such Capital Stock is fully paid and non-assessable.

Section 3.09. No Litigation; Compliance with Laws.

(a) Except as set forth on Schedule 3.09, as of the Closing Date, there are no actions, suits or proceedings at law or in equity or by or before any arbitrator or Governmental Authority now pending or, to the knowledge of the Borrower, threatened in writing against any of the Loan Parties or any business, property or rights of any Loan Party, and no such actions, suits or proceedings could reasonably be expected to have a Material Adverse Effect.

(b) There are no actions, suits or proceedings at law or in equity or by or before any arbitrator or Governmental Authority now pending or, to the knowledge of the Borrower, threatened in writing against any of the Companies or any Unrestricted Subsidiary or any business, property or rights of any such Person (i) that could reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect or (ii) that are non-frivolous and challenge the validity or enforceability of any Loan Document or any Lien granted thereunder.

(c) None of the Loan Parties is in violation of, nor will the continued operation of their material properties and assets as currently conducted or as contemplated under the Loan Documents and the Project Documents violate, any applicable law (including any laws relating to campaign finance and contributions to politicians, Gaming Laws and liquor laws), rule or regulation (including any zoning, building, ordinance, code or approval or any building permits) or is in default with respect to any judgment, writ, injunction, decree or order of any Governmental Authority binding on it, where such violation or default, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect.

(d) None of the Loan Parties is in default in the performance, observance or fulfillment of any of the obligations, covenants or conditions contained in any of its Contractual Obligations, and no condition exists which, with the giving of notice or the lapse of time or both, could constitute such a default, except where the consequences, direct or indirect, of such default or defaults, if any, individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect.

(e) Except with respect to any certificates of occupancy for any improvements existing on the Closing Date, the failure of which to be in effect, individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect, any required certificates of occupancy are in effect for each Mortgaged Property as constructed and/or operated as of the time this representation is made or deemed made, and true and complete copies of such certificates of occupancy have been delivered or made available to the Collateral Agent as mortgagee with respect to each Mortgaged Property.

Section 3.10. No Default. No Default or Event of Default has occurred and is continuing.

Section 3.11. Federal Reserve Regulations.

(a) None of the Loan Parties is engaged principally, or as one of its important activities, in the business of extending credit for the purpose of buying or carrying Margin Stock.

(b) No part of the proceeds of any Loan will be used, whether directly or indirectly, and whether immediately, incidentally or ultimately, for purchasing or carrying Margin Stock or for the purpose of purchasing, carrying or trading in any securities under such circumstances as to involve any Loan Party in a violation of Regulation X or to involve any broker or dealer in a violation of Regulation T. No Indebtedness being reduced or retired out of the proceeds of any Loans was or will be incurred for the purpose of purchasing or carrying any Margin Stock. Following the application of the proceeds of the Loans, Margin Stock will not constitute more than 25% of the value of the assets of the Loan Parties. None of the transactions contemplated by this Agreement will violate or result in the violation of any of the provisions of the regulations of the Board, including Regulation T, U or X.

Section 3.12. Investment Company Act. None of the Equity Pledgor, the Completion Guarantor nor any Loan Party is required to be registered as an "investment company" as defined in, or subject to regulation under, the Investment Company Act of 1940, as amended.

Section 3.13. Use of Proceeds.

(a) The Borrower and each other applicable Loan Party will use the proceeds of the Loans solely (x) for payment of Building Loan Costs incurred in connection with the construction of the Project in accordance with the Building Budget, (y) Golf Course Expenditures and (z) for payment of Debt Financing Costs (as defined in the Building Loan Disbursement Agreement) in respect of the Loans (including to fund the Interest Reserve Account), in each case constituting Costs of the Improvements and in accordance with Section 22 of the Lien Law Affidavit.

(b) The proceeds of the Loans will not be used, directly or indirectly, by the Loan Parties or their respective Subsidiaries or Unrestricted Subsidiaries in violation of Anti-Corruption Laws or Sanctions.

(c) The Borrower and each other applicable Loan Party will use the proceeds of the Revolving Loans solely for working capital needs, capital expenditures and for other general corporate purposes of the Borrower and the other Loan Parties (other than Project Costs and Golf Course Expenditures).

Section 3.14. Tax Returns. Except as would not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect, the Equity Pledgor and each of its Subsidiaries has timely filed or timely caused to be filed all Federal and state income tax returns and other tax returns or materials required to have been filed by it (where any such tax return could give rise to a liability imposed on the Borrower or any of its Subsidiaries) and all such tax returns and materials are correct and complete. Except as would not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect, the Equity Pledgor and each of its Subsidiaries has timely paid or timely caused to be paid all Federal, state and other Taxes due and

payable by it, if any (in each case, where such Tax or assessment could be a liability of or be imposed on the Borrower or any of its Subsidiaries), and all assessments received by it, if any, except any Taxes that are being contested in good faith by appropriate proceedings and for which such Loan Party shall have set aside on its books adequate reserves in accordance with GAAP. None of the Equity Pledgor or its Subsidiaries intends to treat the Loans, the Transactions, or any of the other transactions contemplated by any Loan Documents as being a "reportable transaction" (within the meaning of Treasury Regulation Section 1.6011-4).

Section 3.15. **No Material Misstatements**. No factual information (other than projections, pro forma financial information, forward looking information, and information of a general economic nature, as to which no representation is made under this Section) furnished by or on behalf of any Company in writing to the Lead Arranger, the Administrative Agent or any Lender for use in connection with the Transactions and other transactions contemplated by the Loan Documents or delivered pursuant thereto contained or contains any material misstatement of fact or omitted or omits to state any fact necessary to make the statements therein, in the light of the circumstances under which they were or are made, not misleading in any material respect, in each case, taken as a whole; provided that to the extent any such information was based upon or constitutes a forecast or projection, the Borrower represents only that it acted in good faith and utilized assumptions believed by it at the time initially furnished to the Lead Arranger, the Administrative Agent, or any Lender to be reasonable in light of current conditions in the preparation of such information, it being acknowledged and agreed by the Administrative Agent, the Lead Arranger and the Lenders that projections as to future events are not to be viewed as facts and that the actual results during the period or periods covered by such projections may differ from the projected results and that such differences may be material.

Section 3.16. **Employee Benefit Plans**. Except as could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, each of the Loan Parties and each of their respective ERISA Affiliates and each Benefit Plan (if any) is in compliance with the applicable provisions of ERISA and the Tax Code and the regulations and published interpretations thereunder. No ERISA Event has occurred or, to the knowledge of the Borrower, is reasonably expected to occur that, when taken together with all other such ERISA Events, could reasonably be expected to have a Material Adverse Effect. There are no pending or, to the knowledge of the Borrower written threats of claims, actions or lawsuits, or action by any participant or Governmental Authority, with respect to any Benefit Plan or other employee benefit plan as defined in Section 3(3) of ERISA (other than a Multiemployer Plan, if any) maintained or contributed to by any of the Loan Parties or any of their respective ERISA Affiliates that, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect.

Section 3.17. **Environmental Matters**. Except with respect to any matters that, individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect and, other than as described on Schedule 3.17, that, individually or in the aggregate, could not reasonably be expected to result in a material liability to the Loan Parties, none of the Loan Parties or Unrestricted Subsidiaries:

(a) has failed to comply with any Environmental Law or to take, in a timely manner, all actions necessary to obtain, maintain, renew and comply with any Environmental Permit applicable to it or any Real Property, and all such Environmental Permits are in full force and effect and not subject to any administrative or judicial appeal;

(b) has become a party to any governmental, administrative or judicial proceeding under Environmental Law or possesses knowledge of any such proceeding that has been threatened in writing against it;

(c) has received written notice of, become subject to, any Environmental Claim or Environmental Liability applicable to it or any Real Property other than those which have been fully and finally resolved and for which no obligations remain outstanding;

(d) possesses knowledge that any Real Property (i) is subject to any Lien, restriction on ownership, occupancy, use or transferability imposed pursuant to Environmental Law or (ii) contains or previously contained Hazardous Materials of a form or type or in a quantity or location, in each case that could reasonably be expected to result in any Environmental Liability of any Loan Party;

(e) possesses knowledge that there has been a Release or threat of Release of Hazardous Materials at or from the Real Properties (or from any facilities or other properties formerly owned, leased or operated by any Loan Party or any Unrestricted Subsidiary) in violation of, or in amounts or in a manner that could reasonably be expected to give rise to any Environmental Liability;

(f) has generated, treated, stored, transported, or Released Hazardous Materials in violation of, or in a manner or to a location, or has otherwise engaged in any Hazardous Materials Activity, that, in any such case, could reasonably be expected to give rise to any Environmental Liability; or

(g) has, pursuant to any order, decree, judgment or agreement by which it is bound, assumed the Environmental Liability of any other Person.

Any other representation or warranty contained in this Agreement notwithstanding, the representations and warranties contained in this Section 3.17 constitute the sole representations and warranties of the Loan Parties under this Agreement relating to any Environmental Law or Environmental Liability.

Section 3.18. Insurance. Schedule 3.18 sets forth a true and correct description in all material respects of all insurance maintained by or on behalf of the Loan Parties as of the Closing Date. As of the Closing Date, such insurance is in full force and effect and all premiums (or, if applicable, all installments thereof due on or before the Closing Date) have been duly paid and such insurance is provided in such amounts and covering such risks and liabilities (and with such deductibles, retentions and exclusions) as are in accordance with the terms of Exhibit K and with normal and prudent industry practice. None of the Loan Parties (a) has received notice from any insurer (or any agent thereof) that substantial capital improvements or other substantial expenditures will have to be made in order to continue such insurance (in each case, unless such improvements or expenditures are permitted by the Disbursement Agreements or are, after taking into consideration

other reasonably anticipated Consolidated Capital Expenditures during the period in question, reasonably expected to be permitted pursuant to Section 6.08(c)) or (b) has any reason to believe that it will not be able to (i) maintain (or obtain when and as required) the insurance coverage required to be maintained under the Loan Documents or (ii) renew its existing coverage as and when such coverage expires or to obtain similar coverage from similar insurers.

Section 3.19. Security Documents.

(a) Each of the Pledge and Security Agreement and the Equity Pledge Agreement is effective to create in favor of the Collateral Agent, for the ratable benefit of the Secured Parties, a legal, valid, binding and enforceable security interest in the Collateral described therein and (i) in the case of the Pledged Collateral, upon the earlier of (A) delivery of such Pledged Collateral to the Collateral Agent and (B) filing of financing statements in appropriate form in the offices specified on Schedule 3.19(a) and (ii) in the case of all other Collateral described therein (other than Intellectual Property Collateral, the Real Property and Collateral of the type described in clause (d) below), when financing statements in appropriate form are filed in the offices specified on Schedule 3.19(a), and the other actions described in Section 4.1(a)(iv) of the Pledge and Security Agreement have been taken each of the Pledge and Security Agreement and the Equity Pledge Agreement shall constitute a fully perfected Lien on, and security interest in, all right, title and interest of the Loan Parties and the Equity Pledgor in such Collateral (other than any such Collateral for which the Lien thereon is expressly not required to be perfected pursuant to such Loan Documents and with respect to Intellectual Property Collateral, only if and to the extent perfection may be achieved in the United States by such filings), as security for the Obligations, in each case subject only to Permitted Liens and prior and superior in right to the rights of any other Person (except with respect to Senior Permitted Liens).

(b) When each Intellectual Property Security Agreement is filed in the United States Patent and Trademark Office or the United States Copyright Office, as applicable, together with financing statements in appropriate form filed in the offices specified in Schedule 3.19(a), such Intellectual Property Security Agreement shall constitute a fully perfected Lien on (if and to the extent perfection may be achieved in the United States by such filings), and security interest in, all right, title and interest of the grantors thereunder in the Intellectual Property Collateral registered in the United States, as security for the Obligations, in each case subject only to Permitted Liens and prior and superior in right to the right of any other Person (except with respect to Senior Permitted Liens) (it being understood that subsequent recordings in the United States Patent and Trademark Office and the United States Copyright Office may be necessary to perfect a lien on registered trademarks and patents, trademark and patent applications and copyrights acquired by the grantors after the date hereof).

(c) Each of the Mortgages is effective to create in favor of the Collateral Agent, for the ratable benefit of the Secured Parties, a legal, valid, binding and enforceable Lien on, and security interest in, all of the applicable Loan Party's right, title and interest in and to the Mortgaged Property, and when the Mortgages are recorded in the offices specified on Schedule 3.19(c), all applicable mortgage recording taxes and recording charges are paid and this Agreement and a Section 22 Lien Law Affidavit are filed in the offices specified on Schedule 3.19(c), each such Mortgage shall

constitute a perfected Lien on, and security interest in, all right, title and interest of the grantors thereof in such Mortgaged Property, as security for the Obligations, in each case subject only to Permitted Liens and prior and superior in right to the rights of any other Person (except with respect to Senior Permitted Liens).

(d) Each of the Control Agreements, taken together with the Pledge and Security Agreement, is effective to create and perfect in favor of the Collateral Agent, for the ratable benefit of the Secured Parties, a legal, valid, binding and enforceable security interest in the Investment Accounts described therein. Upon the execution of the Control Agreements and the Pledge and Security Agreement, such Security Documents shall constitute perfected Liens on, and security interests in, all right, title and interest of the Loan Parties in the Investment Accounts described therein, as security for the Obligations, in each case subject only to Permitted Liens and prior and superior in right to the rights of any other Person (except with respect to Senior Permitted Liens).

Section 3.20. Location of Real Property. Schedule 3.20 lists completely and correctly, in all material respects, as of the Closing Date, all Real Property and the addresses, if any, thereof, indicating for each parcel whether it is owned or leased, including in the case of leased Real Property, the landlord name, lease date and lease expiration date.

Section 3.21. Labor Matters. There are no strikes, lockouts or slowdowns against any Loan Party pending or, to the knowledge of the Borrower, threatened in writing, that, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect. All payments due from any Loan Party or for which any claim may be made against any Loan Party, on account of wages or employee health and welfare insurance or other benefits, have been paid or accrued as a liability on the books of such Loan Party except to the extent that the failure to do so has not had, and could not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect. The consummation of the Transactions will not give rise to any right of termination or right of renegotiation on the part of any union under any collective bargaining agreement to which any Loan Party is bound. Except as could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, the hours worked by and payments made to employees of any Loan Party have not been in violation of the Fair Labor Standards Act of 1938, as amended.

Section 3.22. Liens. There are no Liens of any nature whatsoever on any of the Property or assets of any Loan Party (other than Permitted Liens).

Section 3.23. Intellectual Property. Each of the Loan Parties, (a) owns or has the right to use all material Intellectual Property necessary to conduct its business, and (b) the use thereof by each Loan Party does not infringe upon the Intellectual Property rights of any other Person, in each case, except where the failure to own or have such rights or for any such infringements that, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect.

Section 3.24. Solvency. The Loan Parties (taken as a whole on a consolidated basis) are Solvent.

Section 3.25. **Material Contracts**. The documents listed on Schedule 3.25 constitute all of the Material Contracts in effect on the Closing Date. As of the Closing Date, none of such Material Contracts has been amended, supplemented or otherwise modified except as set forth on Schedule 3.25, and all such Material Contracts are in full force and effect. As of the Closing Date, none of the Loan Parties, or, to the Borrower's knowledge, any other party to any such Material Contract, is in material default thereunder.

Section 3.26. **Permits**. Except with respect to any Permits the failure of which to be in effect could not reasonably be expected to have a Material Adverse Effect, (a) each Loan Party has obtained and holds all Permits required as of the date on which this representation and warranty is made in respect of (i) all Real Property and for any other property otherwise operated by or on behalf of, or for the benefit of, such Person, (ii) the construction, development, ownership and operation of the Project (in each case as contemplated under the Loan Documents, the Project Documents and the Plans and Specifications), and (iii) the operation of each of such Person's businesses, in each case, as presently conducted, (b) all such Permits are in full force and effect, and each Loan Party has performed and observed all requirements of such Permits, (c) no event has occurred that allows or results in, or after notice or lapse of time would allow or result in, revocation or termination by the issuer thereof or in any other impairment of the rights of the holder of any such Permit, (d) no such Permits contain any restrictions, either individually or in the aggregate, that are burdensome to any Loan Party, to the operation of any of its businesses as currently conducted (or currently proposed to be conducted), to the financing contemplated under the Loan Documents, or to the development, construction, ownership or operation of the Project (in each case, as contemplated under the Loan Documents, the Project Documents and the Plans and Specifications), or to the operation of any other property owned, leased or otherwise operated by such Person, (e) the Borrower has no knowledge that any Governmental Authority is considering limiting, suspending, revoking or renewing on burdensome terms any such Permit and (f) each Loan Party reasonably believes that each such Permit will be timely renewed and complied with, without unreasonable expense, and that any additional Permits that may be required of such Person will be timely obtained and complied with, without unreasonable expense.

Section 3.27. **Senior Indebtedness**. The Obligations (including the guarantee obligations of each Subsidiary Guarantor and the Borrower under the Loan Documents) constitute senior secured Indebtedness of each of the Loan Parties.

Section 3.28. **Fiscal Year** . The Fiscal Year of each of the Loan Parties (including the Borrower) ends on December 31 of each calendar year.

Section 3.29. **Patriot Act**. To the extent applicable, each Company and each Unrestricted Subsidiary is in compliance, in all material respects, with the (i) Trading with the Enemy Act, as amended, and each of the foreign assets control regulations of the United States Treasury Department (31 CFR, Subtitle B, Chapter V, as amended) and any other enabling legislation or executive order relating thereto, and (ii) Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act (USA Patriot Act of 2001) (the " Patriot Act"). No part of the proceeds of any Loan will be used, directly or indirectly, for any payments to any governmental official or employee, political party, official of a political party, candidate for political

office, or anyone else acting in an official capacity, in order to obtain, retain or direct business or obtain any improper advantage, in violation of the United States Foreign Corrupt Practices Act of 1977, as amended.

Section 3.30. Anti-Terrorism Laws.

(a) All of the Loan Parties, Unrestricted Subsidiaries and, to the knowledge of the Loan Parties, all of their respective Affiliates, are in compliance, in all material respects, with all Anti-Terrorism Laws.

(b) None of the Loan Parties, Unrestricted Subsidiaries or, to the knowledge of the Loan Parties, any of their respective Affiliates or their respective agents acting or benefiting in any capacity in connection with the Loans or the other transactions hereunder, is any of the following (each a "Blocked Person"):

(i) a Person that is listed in the annex to Executive Order No. 13224;

(ii) a Person 50% individually or in the aggregate owned by, or acting for or on behalf of, any Person that is listed in the annex to Executive Order No. 13224;

(iii) a Person with which any Agent or Lender is prohibited from dealing in any transaction by any Anti-Terrorism Law;

(iv) a Sanctioned Person; or

(v) a Person that is named as a "specially designated national" on the most current list published by the U.S. Treasury Department Office of Foreign Assets Control at its official website or any replacement website or other replacement official publication of such list.

(c) No Loan Party or Unrestricted Subsidiary conducts any business with (i) a Sanctioned Country or (ii) a Sanctioned Person.

Section 3.31. Anti-Corruption Laws and Sanctions.

(a) The Borrower has implemented and maintains in effect policies and procedures designed to ensure compliance in all material respects by the Borrower, its Subsidiaries, its Unrestricted Subsidiaries and (in their capacities as such) their respective directors, officers, employees and agents with Anti-Corruption Laws and Sanctions.

(b) The Borrower, its Subsidiaries, its Unrestricted Subsidiaries, or to the knowledge of the Borrower, their respective officers, directors, employees and agents when acting on behalf of the Borrower, its Subsidiaries or its Unrestricted Subsidiaries are in compliance with Anti-Corruption Laws and applicable Sanctions in all material respects.

(c) (i) No Loan Party and none of its directors or officers, and (ii) to the knowledge of any Loan Party, no employee or agent of such Loan Party that will act in any capacity in connection

with the credit facility established hereby when acting or benefiting in connection with the Loans or the other transactions hereunder, is a Sanctioned Person.

Section 3.32. **Regulation H**. No Mortgage encumbers improved Real Property which is located in an area that has been identified by the Secretary of Housing and Urban Development as an area having special flood hazards and in which flood insurance has been made available under the National Flood Insurance Act of 1968 (except any Mortgaged Properties as to which such flood insurance as required by Regulation H has been obtained and is in full force and effect as required by this Agreement).

Section 3.33. **Section 22 Lien Law Affidavit** A true, correct and complete Section 22 Lien Law Affidavit executed and delivered by an Authorized Officer of the Borrower in connection with the Loans has been delivered to the Administrative Agent and is made a part of hereof. Such Section 22 Lien Law Affidavit complies in all respects with the requirements set forth in Section 22 of the Lien Law of the State of New York.

Section 3.34. **Construction and Affiliated Development**. The Waterpark Project (as defined in the Development Documents) is being timely and diligently developed in a manner that, in the reasonable determination of the Borrower, will permit the Borrower to comply with Section 6 of the Gaming License Conditions.

ARTICLE IV.

CONDITIONS PRECEDENT

The obligations of the Lenders to make Loans are subject to the satisfaction (or waiver)(in the case of Section 4.01, by each Lender) of the following conditions:

Section 4.01. **Closing Date**. On the Closing Date:

(a) Legal Opinions. The Lead Arranger and the Administrative Agent, on behalf of itself and the Lenders, shall have received written opinions of (i) Paul, Weiss, Rifkind, Wharton & Garrison LLP, as special New York counsel for the Loan Parties, the Completion Guarantor and the Equity Pledgor, and (ii) Fox Rothschild LLP, as special New York counsel for the Loan Parties, the Equity Pledgor and the Completion Guarantor, each such opinion to be (A) dated the Closing Date, (B) addressed to the Administrative Agent, the other Agents and the Lenders, (C) covering such matters relating to the Loan Documents and the Transactions as the Lead Arranger and the Administrative Agent shall reasonably request and which are customary for transactions of the type contemplated herein and (D) otherwise in form and substance reasonably satisfactory to the Lead Arranger and the Administrative Agent.

(b) Companies' Documents. The Lead Arranger and the Administrative Agent shall have received (i) a copy of the certificate of formation or organization, articles of incorporation, certificate of limited partnership or other formation documents, including all amendments thereto, of each Company, certified as of a recent date by the Secretary of State of the state of its organization, and a certificate as to the good standing of each Company as of a recent date, from such Secretary

of State; (ii) a certificate of the Secretary, Assistant Secretary, managing member or other Authorized Officer of each Company dated the Closing Date and certifying (A) that attached thereto is a true and complete copy of the limited liability company agreement, operating agreement, by-laws, limited partnership agreement or other such Governing Document of such Company as in effect on the Closing Date and at all times since a date prior to the date of the resolutions described in clause (B) below, (B) that attached thereto is a true and complete copy of resolutions duly adopted by the board of directors, board of managers, manager, general partner, managing member or similar governing body of such Company authorizing the execution, delivery and performance of the Loan Documents to which such Person is a party, and in the case of the Borrower, the borrowings hereunder, in the case of each Loan Party and the Equity Pledgor, the granting of the Liens contemplated to be granted by it under the Security Documents, in the case of each Subsidiary Guarantor and the Borrower, the Guaranteeing of the Obligations as contemplated by the Subsidiary Guaranty, in the case of the Completion Guarantor, the Guaranteeing of the Obligations as contemplated by the applicable Completion Guaranty, and, in the case of each Company, the guarantees and other obligations set forth in the Loan Documents, and that such resolutions have not been modified, rescinded or amended and are in full force and effect, (C) that the certificate of formation, articles or certificate of organization, articles of incorporation, certificate of limited partnership or other formation documents of such Company have not been amended since the date of the last amendment thereto shown on the certificate with respect thereto furnished pursuant to clause (i) above and (D) as to the incumbency and specimen signature of each officer or other authorized signatory executing any Loan Document or any other document delivered in connection herewith on behalf of such Company; (iii) in the case of each Company, a certificate of another officer as to the incumbency and specimen signature of the Secretary, Assistant Secretary, managing member or other Authorized Officer, as the case may be, executing the certificate pursuant to (ii) above; and (iv) such other documents related to the foregoing matters as the Administrative Agent, the Lead Arranger or any Lender may reasonably request.

(c) Officer's Certificate. The Administrative Agent shall have received the Closing Certificate, dated the Closing Date and signed by a Financial Officer or other authorized officer of the Borrower, confirming, among other things, compliance with the conditions precedent set forth in Section 4.02(b) and Section 4.02(c).

(d) Loan Documents. The Lead Arranger and the Administrative Agent shall have received each of the Loan Documents listed on Schedule 4.01(d)(i) and each of the Revolving Facility Documents listed on Schedule 4.01(d)(ii), in each case executed and delivered by a duly authorized officer of each party thereto, in form and substance reasonably satisfactory to the Lead Arranger and in full force and effect as of the Closing Date.

(e) Collateral. The Collateral Agent, for the ratable benefit of the Secured Parties, shall have been granted on the Closing Date first priority perfected Liens on the Collateral (subject, (v) in the case of Intellectual Property Collateral, if and to the extent perfection may be achieved in the United States by the filings required by the Loan Documents, (w) in the case of Mortgages and Assignments of Leases and Rents, to recordation after the Closing Date, (x) in the case of Pledged Collateral, to no Liens (other than Liens under the Revolving Facility Documents (subject to the Intercreditor Agreement)), and in the case of all Collateral other than Pledged Collateral, only to

Permitted Liens and, in each case, prior and superior in right to the rights of any other Person (except with respect to Senior Permitted Liens), and (y) to the lack of perfection with respect to any such Collateral for which the Lien thereon is expressly not required to be perfected pursuant to such Loan Documents) and shall have received such other reports, documents and agreements as the Administrative Agent shall reasonably request and which are customarily delivered in connection with security interests in real property assets. The Pledged Collateral shall have been duly and validly pledged under the Pledge and Security Agreement and the Equity Pledge Agreement to the Collateral Agent, for the ratable benefit of the Secured Parties, and certificates representing such Pledged Collateral, if any, accompanied by instruments of transfer and stock powers endorsed in blank, shall be in the actual possession of the Collateral Agent or the Revolving Collateral Agent, as applicable.

(f) UCC, Lien, Judgment and Bankruptcy Searches. The Administrative Agent shall have received the results of a recent lien, bankruptcy and judgment search in each relevant jurisdiction with respect to the Loan Parties and the Equity Pledgor and such search shall reveal no Liens on any of the Pledged Collateral or other assets of the Loan Parties and the Equity Pledgor except, in the case of Collateral other than Pledged Collateral, for Permitted Liens and except for Liens to be discharged on or prior to the Closing Date pursuant to documentation reasonably satisfactory to the Administrative Agent.

(g) Indebtedness. After giving effect to the Transactions and the other transactions contemplated hereby, the Loan Parties shall have outstanding no Indebtedness or preferred stock other than the Loans, the Revolving Loans and other Indebtedness listed on Schedule 6.01.

(h) Financial Statements. The Lead Arranger and the Administrative Agent shall have received such financial statements and other financial information as requested by them with respect to the Completion Guarantor.

(i) Projections. The Lead Arranger and the Administrative Agent shall have received projections of the Borrower and the Project for the period commencing on the Casino Opening Date through the latest Scheduled Maturity Date.

(j) Governmental Approvals. (i) The New York State Gaming Commission shall have issued its approval of the Transactions in form and substance reasonably satisfactory to the Administrative Agent and the Lead Arranger, and (ii) all other material governmental and third party approvals and all Permits necessary or advisable as of the Closing Date in connection with the Transactions, the Loan Parties and the development, construction and ownership of the Project (as contemplated under the Loan Documents, the Project Documents and the Plans and Specifications) shall have been obtained on terms reasonably satisfactory to the Administrative Agent and the Lenders and shall be in full force and effect. Other than as set forth on Schedule 3.09, there shall not exist any action, suit, investigation, litigation or proceeding pending or threatened in any court or before any arbitrator or Governmental Authority that has had, or could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

(k) Patriot Act. The Lead Arranger, the Administrative Agent and the Lenders shall have received, at least three (3) Business Days prior to the Closing Date (or such shorter time period as

agreed to by the Lead Arranger and the Administrative Agent), all documentation and other information requested by them and required by regulatory authorities under applicable "know your customer" and anti-money laundering rules and regulations, including the Patriot Act.

(l) Title Insurance. The Lead Arranger, the Administrative Agent and the Collateral Agent shall have received in respect of each Mortgaged Property a mortgagee's title insurance policy (or policies) or marked up unconditional binder for such insurance or unconditional commitment to issue a title policy for such insurance. Each such policy shall (i) be in an amount satisfactory to the Lead Arranger and the Administrative Agent; (ii) insure that the Mortgage insured thereby creates a valid first Lien on, and security interest in, such Mortgaged Property free and clear of all defects and encumbrances, except as disclosed therein; (iii) name the Collateral Agent, for the benefit of the Secured Parties, as the insured thereunder; (iv) be in the form of ALTA Loan Policy acceptable to the Lead Arranger and the Administrative Agent; (v) not include the "standard" title exceptions, including any exceptions for mechanics' liens: (vi) contain such endorsements and affirmative coverage as the Lead Arranger or the Administrative Agent may reasonably request, each in form and substance reasonably acceptable to the Lead Arranger and the Administrative Agent, and (vii) be issued by title companies reasonably satisfactory to the Lead Arranger and the Administrative Agent (including any such title companies acting as co-insurers or reinsurers, at the option of the Lead Arranger or the Administrative Agent), it being agreed that Stewart Title Insurance Company is acceptable to the Lead Arranger and the Administrative Agent (in each such case, a "Title Company"). The Lead Arranger, the Administrative Agent and the Collateral Agent shall have received evidence reasonably satisfactory to each of them that all premiums in respect of each such policy, any charges for mortgage recording tax, and all related expenses, if any, have been paid or will be paid on the Closing Date and that all mortgage tax and related affidavits, if any, have been delivered to the Title Company. The Lead Arranger, the Administrative Agent and the Collateral Agent shall have received a copy of all recorded documents referred to, or listed as exceptions to title in, the title policy or policies referred to above.

(m) Flood Insurance. The Lead Arranger, the Administrative Agent and the Collateral Agent shall have received (i) evidence as to whether (1) any Mortgaged Properties are located in an area designated by the Federal Emergency Management Agency as having special flood or mud slide hazards and (2) the communities in which any such Mortgaged Properties are located are participating in the National Flood Insurance Program, (ii) if there are any such Mortgaged Properties, the Borrower's written acknowledgement of receipt of written notification from the Administrative Agent (1) as to the existence of each such Mortgaged Property and (2) as to whether the communities in which such Mortgaged Properties are located are participating in the National Flood Insurance Program, and (iii) if any such Mortgaged Properties are located in communities that participate in the National Flood Insurance Program, evidence that the applicable Loan Party has obtained flood insurance in respect of such Mortgaged Properties to the extent required under the applicable regulations of the Board.

(n) Surveys. The Lead Arranger, the Administrative Agent and the Title Company shall have received maps or plans of an ALTA survey of each Mortgaged Property, which shall show, among other things, the location of all improvements on such Mortgaged Property, be certified to the Lead Arranger, the Administrative Agent, the Collateral Agent and the Title Company and dated,

in each case in a manner reasonably satisfactory to them, by an independent professional licensed land surveyor reasonably satisfactory to the Lead Arranger, the Administrative Agent, the Collateral Agent and the Title Company.

(o) Landlord Estoppel Certificates and Subordination, Non-Disturbance and Attornment Agreements.

(i) The Lead Arranger, the Administrative Agent and the Collateral Agent shall have received estoppel certificates from the landlord with respect to each material leased Real Property that constitutes Mortgaged Property to the extent so requested, confirming the nonexistence of any default thereunder and certain other information with respect to such lease, each of the foregoing in form and substance reasonably satisfactory to the Lead Arranger, the Administrative Agent and the Collateral Agent. In the event the Administrative Agent or the Collateral Agent has determined that a recorded memorandum of lease or an amendment of lease is necessary or appropriate in order to make any such material leased Real Property mortgageable, or to grant the leasehold lender customary lender protections, then the Administrative Agent and the Collateral Agent shall have received evidence of such recordation or a copy of such fully executed and binding lease amendment.

(ii) The Lead Arranger, the Administrative Agent and the Collateral Agent shall have received customary subordination, non-disturbance and attornment agreements from the tenants with respect to any material space leases at the Mortgaged Properties to the extent so requested (including statements confirming the nonexistence of any default under, and certain other information with respect to, such space leases), in each case in form and substance reasonably satisfactory to the Lead Arranger, the Administrative Agent and the Collateral Agent.

(p) Fees. The Lenders, the Agents and the Lead Arranger shall have received all Fees required to be paid, and all expenses required to be paid for which invoices have been presented, on or before the Closing Date.

(q) Litigation. There shall be no Proceedings (whether or not purportedly on behalf of any Company) at law or in equity, or before or by any federal, state, municipal or other governmental department, commission, board, bureau, agency or instrumentality, domestic or foreign (including any Environmental Claims) that are pending or, to the knowledge of the Borrower, threatened in writing against any Company or affecting any property of any Company, that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect.

(r) Insurance.

(i) The Loan Parties shall have (or shall cause to be maintained) insurance complying with the requirements of Section 5.05 in place and in full force and effect, and the Administrative Agent, the Collateral Agent and the Lead Arranger shall each have received (x) a certificate from the Borrower's insurance broker(s) reasonably satisfactory to them and the Insurance Advisor stating that such insurance is in place and in full force and effect and (y) copies of all policies evidencing such insurance (or a binder, commitment or certificates

signed by the insurer or a broker authorized to bind the insurer, in which case copies of the applicable policies shall be delivered to the Administrative Agent within thirty (30) days after the Closing Date (or such later date as the Administrative Agent may agree)) naming the Administrative Agent, Collateral Agent and the Secured Parties as additional insureds and the Collateral Agent as loss payee (until such time as the Obligations have been paid in full), in accordance with the terms noted in Exhibit K, and otherwise in form and substance reasonably satisfactory to the Administrative Agent, the Collateral Agent, the Lead Arranger and the Insurance Advisor.

(ii) The Lead Arranger, the Administrative Agent and the Collateral Agent shall have each received, to the extent not delivered pursuant to clause (i) above, (A) a certificate of the Borrower's insurance broker(s) reasonably satisfactory to them identifying underwriters, type of insurance, insurance limits and policy terms of any insurance then required to be obtained under the Material Contracts then in effect as of the Closing Date and stating that such insurance is in full force and effect if the same is required to be in effect and that if then required to be in effect, all premiums then due thereon have been paid, and that such insurance complies with the requirements of such Material Contracts, and (B) complete copies of all policies evidencing such insurance (or a binder, commitment or certificates signed by the insurer or a broker authorized to bind the insurer along with a commitment to deliver complete copies, in which case copies of the applicable policies shall be delivered to the Administrative Agent within thirty (30) days after the Closing Date) naming the Administrative Agent, the Collateral Agent and the Secured Parties as additional insureds and the Collateral Agent as loss payee, in accordance with the terms noted in Exhibit K, and otherwise in form and substance reasonably satisfactory to the Administrative Agent, the Collateral Agent and the Lead Arranger.

(iii) The Administrative Agent, the Lead Arranger and the Collateral Agent shall have received a report of the Insurance Advisor regarding insurance matters pertaining to the Loan Parties, the Project and under the Material Contracts in effect as of the Closing Date, in form, scope and substance reasonably satisfactory to them.

(s) Capitalization; Ownership Structure. The Lead Arranger and the Administrative Agent shall be reasonably satisfied with (i) the capital structure of the Companies and (ii) the terms and conditions of the Transactions. The Loan Parties shall have received the Closing Date Equity Contribution and shall have deposited it into the Company Funds Account.

(t) Solvency Certificate. The Lead Arranger and the Administrative Agent shall have received a Solvency Certificate from the chief financial officer of the Borrower and the Completion Guarantor in form and substance reasonably satisfactory to the Lead Arranger and the Administrative Agent.

(u) Environmental Reports. The Lead Arranger and the Administrative Agent shall have received a copy of a report or copies of reports in form, scope and substance reasonably satisfactory to them regarding the environmental matters pertaining to each Mortgaged Property, including an identification of existing and potential environmental concerns, in each case together with a reliance letter in connection therewith (if such reports are not addressed to the Administration Agent) from

an environmental consulting firm reasonably acceptable to the Lead Arranger, authorizing the Agents and the Secured Parties to rely on each such report.

(v) Construction Consultant's Reports. The Administrative Agent and the Lead Arranger shall have received a report from the Construction Consultant regarding construction, budget and technical matters pertaining to the Project and the Project Documents related thereto, in form, scope and substance satisfactory to them.

(w) Construction Budget. The Administrative Agent, the Lead Arranger and the Construction Consultant shall have received a (x) budget (as amended from time to time in accordance with the terms of this Agreement and the Disbursement Agreements, the "Building Budget") for all anticipated Building Loan Costs (including Building Loan Costs incurred prior to, as well as after, the Closing Date) and (y) budget (as amended from time to time in accordance with the terms of this Agreement and the Disbursement Agreements, the "Project Budget" and, together with the Building Budget, the "Construction Budget") for all anticipated Project Costs not otherwise specified in the Building Budget (including Project Costs incurred prior to, as well as after, the Closing Date, including closing costs and interest and other scheduled payments hereunder, and including a contingency reserve reasonably acceptable to the Administrative Agent and the Lead Arranger in consultation with the Construction Consultant and FF&E Costs, in each case, which includes a monthly drawdown schedule for disbursements under the applicable Disbursement Agreement necessary to achieve Final Completion and such other information and supporting data as any of the Administrative Agent, the Lead Arranger or the Construction Consultant may reasonably require, together with a balanced statement of sources and uses of proceeds (and any other funds necessary to complete the Project), broken down by Line Item (as defined in the Building Loan Distribution Agreement), which Building Budget and Project Budget, drawdown schedule and statement of sources and uses shall be reasonably satisfactory to the Administrative Agent and the Lead Arranger in consultation with the Construction Consultant.

(x) Project Schedule and Schedule of Key Dates. The Administrative Agent, the Lead Arranger and the Construction Consultant shall have received a schedule for construction and completion of the Project (as amended from time to time in accordance with the terms of the Disbursement Agreements, the "Project Schedule") including a monthly progress schedule and a schedule of key dates for construction and completion of the Project, each of which demonstrates that the Casino Opening Date is expected to occur on or before the Scheduled Casino Opening Date and the Completion Date is expected to occur on or before the Scheduled Completion Date and which is otherwise satisfactory to the Lead Arranger in consultation with the Construction Consultant.

(y) Consents and Material Contracts. The Administrative Agent and the Lead Arranger shall have received a fully executed and complete, conformed copy or photocopy of the General Contract, the Architectural Services Agreement, the IDA Documents, the Development Documents, and each other Material Contract executed or otherwise in effect on the Closing Date (each in form and substance reasonably acceptable to the Lead Arranger, the Administrative Agent and, to the extent applicable, the Construction Consultant), together, in the case of the General Contract and the Architectural Services Agreement and, to the extent reasonably requested by the Administrative

Agent, each other Material Contract, with a fully executed and delivered consent to collateral assignment and agreement from each counterparty thereto in form and substance reasonably satisfactory to the Lead Arranger and the Administrative Agent.

(z) Utility Availability. The Construction Consultant shall have become reasonably satisfied, as certified to in the Construction Consultant's report delivered on the Closing Date, that arrangements shall have been or will be made as and when necessary for the provision of all utilities necessary for the construction, operation and maintenance of the Project as contemplated by the Loan Documents, the Project Documents and the Plans and Specifications.

(aa) Plans and Specifications. The Administrative Agent, the Lead Arranger and the Construction Consultant shall have received the Plans and Specifications, which shall be in form and substance reasonably satisfactory to the Lead Arranger in consultation with the Construction Consultant.

(bb) Other Reports. The Administrative Agent and the Lead Arranger shall have received, in form and substance reasonably satisfactory to them, all material reports and audits not otherwise required to be delivered under this Section 4.01 which have been prepared by or for any Loan Party, or any Affiliate, advisor or consultant of any Loan Party, which pertain to the Project.

(cc) FIRREA Appraisal. The Lead Arranger and the Administrative Agent shall have received a FIRREA appraisal of certain Mortgaged Properties, on an as-is basis, and certain portions of the Project on an as-built and a stabilized basis, certified to the Lead Arranger, the Administrative Agent and the other Secured Parties and dated, all in form and substance reasonably satisfactory to the Lead Arranger and the Administrative Agent, by an independent real estate appraiser reasonably satisfactory to the Lead Arranger.

(dd) Representations and Warranties. Each representation and warranty set forth in each Loan Document shall be true and correct in all material respects on and as of the Closing Date, except to the extent such representations and warranties expressly relate to an earlier date, in which case such representations and warranties shall be true and correct in all material respects on and as of such earlier date; provided that, if a representation and warranty contains a materiality or Material Adverse Effect qualification, the materiality qualifier in this Section 4.01(dd) shall be disregarded for purposes of such representation and warranty. Ratings. The Borrower and the Facility shall have received a corporate family rating, a public corporate credit rating and a public facility rating, respectively, from each of S&P and Moody's and the Administrative Agent and the Lead Arranger shall have received copies of all such ratings.

(ee) Section 22 Lien Law Affidavit and Notice of Lending. The Lead Arranger, the Administrative Agent and the Collateral Agent shall have received the Section 22 Lien Law Affidavit and a Notice of Lending, each in form and substance reasonably satisfactory to them and the Title Company. The Borrower shall have delivered to the Title Company for filing in the appropriate public records this Agreement (together with the Building Loan Disbursement Agreement attached as an exhibit hereto), the Section 22 Lien Law Affidavit and the Notice of Lending.

(a) Revolving Credit Agreement. The "Closing Date" under (and as defined in) the Revolving Credit Agreement shall have occurred (or shall occur concurrently with the Closing Date hereunder).

Without limiting the generality of the provisions of Section 8.03(a), for purposes of determining compliance with the conditions specified in this Section 4.01, by signing this Agreement or a Lender Addendum each Lender has consented to, approved or accepted or indicated its satisfaction with, each document or other matter required hereunder to be consented to or approved by or acceptable or satisfactory to a Lender unless the Administrative Agent shall have received notice from such Lender prior to the proposed Closing Date specifying its objection thereto.

Section 4.02. All Credit Events. On the Closing Date (other than in respect of clause (a) below), the date of each Borrowing (unless otherwise noted below), and each Disbursement made pursuant to a Disbursement Request (each such event being called a "Credit Event"):

(a) Notice. The Administrative Agent shall have received a notice of such Borrowing as required by Section 2.01(b) (or such notice shall have been deemed given in accordance herewith). For the avoidance of doubt, no notice under this clause shall be required in connection with any Disbursement (it being understood that the foregoing is not intended to amend, modify or supplement any notice or similar requirements required under either Disbursement Agreement with respect to a Disbursement, including the delivery of a Disbursement Request in accordance therewith).

(b) Representations and Warranties. Except as set forth on Schedule 4.02(b), each representation and warranty made by a Loan Party set forth in each Loan Document shall be true and correct in all material respects on and as of the date of such Credit Event with the same effect as though made on and as of such date, except to the extent such representations and warranties expressly relate to an earlier date, in which case such representations and warranties shall be true and correct in all material respects on and as of such earlier date; provided that, if a representation and warranty contains a materiality or Material Adverse Effect qualification, the materiality qualifier in this Section 4.02(b) shall be disregarded for purposes of such representation and warranty.

(c) No Default. At the time of and immediately after such Credit Event, no Event of Default or Default shall have occurred and be continuing.

ARTICLE V.

AFFIRMATIVE COVENANTS

The Borrower covenants and agrees that, until payment in full of all Obligations, the Borrower shall perform, and shall cause each of the other Loan Parties to perform, all covenants in this Article V.

Section 5.01. Financial Statements and Other Reports. The Borrower will deliver to the Administrative Agent for distribution to the Lenders:

(a) Intentionally Omitted;

(b) Quarterly Financial Statements. Commencing with the Fiscal Quarter in which the Closing Date occurs, no later than sixty (60) (or in the case of the first Fiscal Quarter, seventy-five (75)) days after the end of each Fiscal Quarter (other than the fourth Fiscal Quarter), the consolidated balance sheets of the Borrower and its consolidated Subsidiaries as at the end of such Fiscal Quarter and the related consolidated statements of income, stockholders', members' or partners' equity and cash flows of the Borrower and its consolidated Subsidiaries for such Fiscal Quarter and for the period from the beginning of the then current Fiscal Year to the end of such Fiscal Quarter, setting forth in each case in comparative form the corresponding amounts for the corresponding periods of the previous Fiscal Year (to the extent applicable) and the corresponding amounts from the Financial Plan for the current Fiscal Year (to the extent applicable), all in reasonable detail, together with a Financial Officer Certification and, commencing with the Fiscal Quarter in which the Casino Opening Date occurs (and for each Fiscal Quarter thereafter (other than in respect of the last Fiscal Quarter of any Fiscal Year)), a Narrative Report with respect thereto;

(c) Annual Financial Statements. Commencing with the Fiscal Year in which the Closing Date occurs, as soon as available, and in any event no later than ninety (90) days after the end of each Fiscal Year, (i) the consolidated balance sheet of the Borrower and its consolidated Subsidiaries as at the end of such Fiscal Year and the related consolidated statements of income, stockholders, members' or partners' equity and cash flows of the Borrower and its consolidated Subsidiaries for such Fiscal Year, setting forth in each case in comparative form the corresponding amounts for the previous Fiscal Year and the corresponding amounts from the Financial Plan for the Fiscal Year covered by such financial statements (to the extent applicable), in reasonable detail, together with a Financial Officer Certification and, commencing with the Fiscal Year in which the Casino Opening Date occurs (and for each Fiscal

Year thereafter), a Narrative Report with respect thereto; and (ii) with respect to such consolidated financial statements a report thereon of Ernst & Young or other independent certified public accountant of recognized national standing selected by the Borrower and, if not one of the "Big-4" as of the date hereof, reasonably satisfactory to the Administrative Agent (which report shall not be subject to any "going concern" or like qualification or exception or any qualification or exception as to the scope of such audit, and shall state that such consolidated financial statements fairly present, in all material respects, the consolidated financial position of the Borrower and its consolidated Subsidiaries as of the dates indicated and the results of their operations and their cash flows for the periods indicated in conformity with GAAP applied on a consistent basis with prior years (except as otherwise disclosed in such financial statements) and that the audit by such accountants in connection with such consolidated financial statements has been made in accordance with generally accepted auditing standards), together with a written statement by such independent certified public accountants (to the extent that such accounting firm is willing to provide such statement in accordance with its customary business practice, it being understood that such statement in any event shall be limited to the items that independent certified public accountants are permitted to cover in such statements pursuant to their professional standards and customs of the profession) stating (1) that their audit has included a review of the accounting and financial matters contained in the related Compliance Certificate, and (2) that nothing has come to their attention that causes them to believe that the information contained in such Compliance Certificate related to accounting or financial matters is not correct or that such matters set forth in such Compliance Certificate are not stated in accordance with the terms hereof; provided that it shall not be a violation of preceding clause (ii) if the audit and opinion accompanying the financial statements for any Fiscal Year is subject to a "going concern" or like qualification solely as a result of a Scheduled Maturity Date for the respective Loans being scheduled to occur or a Scheduled Maturity Date (as defined in the Revolving Credit Agreement) for the Loans (as defined in the Revolving Credit Agreement) thereunder being scheduled to occur;

(d) Compliance Certificate. Together with each delivery of financial statements of the Borrower and its consolidated Subsidiaries pursuant to Sections 5.01(b) (other than the last Fiscal Quarter in any Fiscal Year) and 5.01(c), a duly executed and completed Compliance Certificate;

(e) Statements of Reconciliation after Change in Accounting Principles. If, as a result of any change in accounting principles and policies from those used in the preparation of any consolidated financial statements of the Borrower and its consolidated Subsidiaries previously delivered pursuant to Section 5.01(b) or 5.01(c), the consolidated financial statements of the Borrower and its consolidated Subsidiaries delivered pursuant to Section 5.01(b) or 5.01(c) will differ in any material respect from such previously delivered financial statements, then, together with the first delivery of such financial statements after such change, one or more statements of reconciliation for all such prior financial statements in form and substance reasonably satisfactory to the Administrative Agent;

(f) Notice of Default. Promptly, and in any event within five (5) Business Days, upon any Responsible Officer of any Loan Party obtaining knowledge (i) of any condition or event that constitutes a Default or an Event of Default or that notice has been given to any Loan Party with respect thereto; (ii) that any Person has given any notice to any Loan Party or taken any other action with respect to any event or condition set forth in Section 7.01(h); or (iii) of the occurrence of any event or change that has caused or evidences, either in any case or in the aggregate, a Material Adverse Effect, a certificate of one or more of its Authorized Officers specifying the nature and period of existence of such condition, event or change, or specifying the notice given and action taken by any such Person and the nature of such claimed Event of Default, Default, event or condition, and what action the applicable Loan Party has taken, is taking and proposes to take with respect thereto;

(g) Notice of Litigation. Promptly upon any Responsible Officer of any Loan Party obtaining knowledge of (i) the institution of, or non-frivolous written threat of, any Proceeding against a Loan Party or the Equity Pledgor not previously disclosed in writing by the Borrower to the Administrative Agent, or (ii) any material development in any Proceeding against a Loan Party or the Equity Pledgor that, in the case of either preceding clause (i) or (ii) could be reasonably expected to have a Material Adverse Effect, or seeks to enjoin or otherwise prevent the consummation of, or to recover any damages or obtain relief as a result of, the financing transactions contemplated hereby, written notice thereof together with such other information as may be reasonably available to the Loan Parties to enable the Lenders and their counsel to evaluate such matters;

(h) ERISA. (i) Promptly upon any officer of any Loan Party becoming aware of the occurrence of or forthcoming occurrence of any ERISA Event, a written notice specifying the nature thereof, what action the applicable Loan Party or any of its ERISA Affiliate has taken, is taking or proposes to take with respect thereto and, when known, any action taken or threatened in writing by the IRS, the Department of Labor or the PBGC with respect thereto; (ii) with reasonable promptness, copies of (1) each Schedule B (Actuarial Information) to the annual report (Form 5500 Series) filed by any Loan Party or any ERISA Affiliate with the IRS with respect to each Benefit Plan after receipt by a Loan Party of a request for the same from the Administrative Agent or any Lender; (2) all written notices received by any Loan Party or any ERISA Affiliate from a Multiemployer Plan sponsor concerning an ERISA Event; and (3) such other documents or governmental reports or filings relating to any Benefit Plan as the Administrative Agent shall reasonably request; and (iii) as soon as practicable (A) the failure of any Loan Party or any ERISA Affiliate to make payment in all material amounts on or before the due date (including extensions) thereof of all amounts which such Loan Party or ERISA Affiliate is required to contribute to each Benefit Plan pursuant to its terms or, as required to meet the minimum funding standard set forth in

ERISA and the Tax Code with respect thereto, except to the extent the failure to pay such amounts, individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect or (B) any change in the funding status of any Benefit Plan that, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect, a written description of any such event or condition or a copy of any such notice and a statement briefly setting forth the details regarding such event, condition or notice, and the action, if any, which has been taken, is being taken or is proposed to be taken by such Loan Party or such ERISA Affiliate;

(i) Financial Plan. No later than ten (10) days prior to the Casino Opening Date and sixty (60) days after the beginning of each Fiscal Year thereafter, a consolidated plan and financial forecast for such Fiscal Year (or, in the case of the Financial Plan delivered prior to the Casino Opening Date, the Fiscal Year in which the Casino Opening Date occurs) and each Fiscal Year (or portion thereof) through the latest Scheduled Maturity Date (a "Financial Plan"), including (i) a forecasted consolidated balance sheet and forecasted consolidated statements of income and cash flows of the Borrower and its consolidated Subsidiaries for each such Fiscal Year and (ii) forecasted consolidated statements of income and cash flows of the Borrower and its consolidated Subsidiaries for each Fiscal Quarter of the first Fiscal Year addressed in such Financial Plan;

(j) Insurance Report. Each year, at the time of delivery of annual financial statements with respect to the preceding Fiscal Year pursuant to Section 5.01(c), a report in form and substance reasonably satisfactory to the Administrative Agent and the Insurance Advisor outlining all material insurance coverage maintained as of the date of such report by the Loan Parties and all material insurance coverage planned to be maintained by the Loan Parties in the immediately succeeding Fiscal Year or a certificate from an Authorized Officer of the Borrower confirming that there has been no material change in such insurance coverage or noting any such material changes;

(k) Notice Regarding Material Contracts. Promptly after (i) any Gaming License is terminated or amended in any material respect or any other Material Contract (other than any Key Construction and Design Contract (as defined in the Building Loan Disbursement Agreement) or Key Contract (each as defined in the Project Disbursement Agreement)) or of any Loan Party is terminated or amended in any material respect, (ii) any material breach or default has occurred, or to the knowledge of the Borrower, been threatened in writing with respect to any Material Contract (other than any Key Construction and Design Contract (as defined in the Building Loan Disbursement Agreement) or Key Contract (each as defined in the Project Disbursement Agreement)), or (iii) any Material Contract (other than any Key Construction and Design Contract (as defined in the Building Loan Disbursement Agreement) or Key Contract (each as defined in the Project Disbursement Agreement)) is entered into, a written statement describing such event, with copies of such amendments or new contracts;

(l) Environmental Reports and Audits. Promptly following receipt thereof by any Loan Party, copies of all environmental audits, investigations, analyses and reports of any kind or character, whether prepared by personnel of a Loan Party or by independent consultants, governmental authorities or any other Persons, with respect to material environmental matters at any of the Loan Parties' Properties or with respect to any material Environmental Claims against any of the Loan Parties or material Environmental Liabilities;

(m) Information Regarding Collateral. Promptly after such change, written notice of any change (i) in the legal name of any Loan Party or the Equity Pledgor, (ii) in the identity or capital structure of any Loan Party or the Equity Pledgor or (iii) in the Federal Taxpayer Identification Number of any Loan Party or the Equity Pledgor. The Borrower shall not effect or permit (and shall cause the other Loan Parties and the Equity Pledgor not to effect or permit) any change referred to in the preceding sentence unless all filings have been made under the UCC or otherwise that are required in order for the Collateral Agent to continue at all times following such change to have a valid, legal and perfected security interest in all the Collateral as contemplated in the Security Documents. The Borrower shall promptly notify the Administrative Agent upon becoming aware of any material portion of the Collateral being damaged or destroyed;

(n) Annual Collateral Verification. Each year, at the time of delivery of annual financial statements with respect to the preceding Fiscal Year pursuant to Section 5.01(c), a certificate from an Authorized Officer of the Borrower certifying that all UCC financing statements (including fixtures filings, as applicable) or other appropriate filings, recordings or registrations, have been filed of record in each governmental, municipal or other appropriate office in each jurisdiction to the extent necessary to perfect the security interests under the Security Documents for a period of not less than eighteen (18) months after the date of such certificate (except as noted therein with respect to any continuation statements to be filed within such period);

(o) Gaming Authority Communication. Promptly after receipt by any officer of any Loan Party of written notice from any Gaming Authority that such Gaming Authority is considering revoking, suspending or modifying any Gaming License (in whole or in part) in any materially adverse manner;

(p) Hotel and Gaming Information. Together with each delivery of financial statements of the Borrower and its consolidated Subsidiaries pursuant to Section 5.01(b) and Section 5.01(c) after the Casino Opening Date, a summary describing (x) the average daily rates for the hotel located at the Project and (y) wins per unit for slots and tables at the casino located at the Project, in each case,

for the preceding month, Fiscal Quarter or Fiscal Year, as the case may be; and

(q) Other Information. To the extent not prohibited by applicable law or regulation, and subject to confidentiality requirements granted by the applicable Governmental Authority, (i) promptly upon their becoming available, copies of all regular and periodic reports and other material reports and notices, if any, filed by any Loan Party with any governmental or private regulatory authority (including Gaming Authorities), and all press releases and other statements made available generally by any Loan Party or Empire to the public (other than advertising and promotional statements or releases made in the ordinary course of such Loan Party's business) concerning material adverse developments in the business of such Loan Party, and (ii) with reasonable promptness, such other information and data with respect to any Loan Party (including the information referred to in Section 9.22) as from time to time may be reasonably requested by the Administrative Agent.

Section 5.02. Existence. Except as otherwise permitted under Section 6.09, the Borrower will, and will cause each other Loan Party to, at all times preserve and keep in full force and effect its existence; provided that, no Loan Party (other than the Borrower with respect to existence) shall be required to preserve any such existence if such Person's board of directors, board of managers, managing member(s), general partner, manager or similar governing body shall determine that the preservation thereof is no longer desirable in the conduct of the business of such Person, and that the loss thereof is not disadvantageous in any material respect to such Person or to the Secured Parties.

Section 5.03. Payment of Taxes and Claims. The Borrower will, and will cause the Equity Pledgor and each of the Equity Pledgor's Subsidiaries to (a) timely file all Federal and state income tax returns and other tax returns and materials required to be filed by them and (b) pay and discharge prior to the date on which penalties attach thereto (i) all Federal, state and other Taxes imposed upon them or any of their properties or assets or in respect of any of their income, businesses or franchises which, in each case, could be a liability of or be imposed on the Borrower or any of its Subsidiaries and (ii) all claims (including claims for labor, services, materials and supplies) for sums that have become due and payable and that by law have or may become a Lien upon any of their properties or assets which, in each case, could be a liability of or be imposed on the Borrower or any of its Subsidiaries; provided, no such Tax, claim or obligation need be paid if (A) it could not reasonably be expected to result in a Material Adverse Effect or (B) is being contested in good faith by appropriate proceedings promptly instituted and diligently conducted, so long as in the case of (B), (x) adequate reserves or other appropriate provisions, as shall be required in conformity with GAAP, shall have been made therefor, and (y) such contest operates to suspend collection of the contested Tax, claim or obligation (including the sale of any portion of the Collateral to satisfy such Tax, claim or obligation) and enforcement of any Lien against any of the Collateral.

Section 5.04. Maintenance of Properties. The Borrower will, and will cause each other Loan Party to, maintain or cause to be maintained in good repair, working order and condition, ordinary wear and tear and condemnation excepted, all material properties used or useful at the Project or otherwise in the business of the other Loan Parties and from time to time will make or cause to be made all appropriate repairs, renewals and replacements thereof except to the extent that Borrower determines in good faith not to maintain, repair, renew or replace such property if such property is no longer desirable in the conduct of their business and the failure to do so is not disadvantageous in any material respect to any Loan Party or the Lenders.

Section 5.05. Insurance. At all times, the Borrower will maintain or cause to be maintained by such other applicable Loan Party, with financially sound and reputable insurers, the insurance specified in Exhibit K and such other public liability insurance, third party property damage insurance, business interruption insurance and property or casualty insurance with respect to liabilities, losses or damage in respect of the assets, properties and businesses at the Project or otherwise of the Loan Parties as may customarily be carried or maintained under similar circumstances by Persons of established reputation engaged in similar businesses, in each case in such amounts (giving effect to self-insurance), with such deductibles, covering such risks, in such amounts and otherwise on such terms and conditions as specified on Exhibit K and, if not so specified, shall be customary for such Persons. Without limiting the generality of the foregoing, the Borrower will maintain or cause to be maintained by such other applicable Loan Party (a) flood insurance in compliance with any applicable regulations of the Board, and (b) replacement value property insurance on the Collateral of the Loan Parties under such policies of insurance, with such insurance companies, in such amounts, with such deductibles, and covering such risks as specified on Exhibit K and, if not so specified, are customarily carried or maintained under similar circumstances by Persons of established reputation engaged in similar businesses of similar size. Each such policy of insurance shall (i) name the Administrative Agent and the Secured Parties as additional insureds thereunder (as applicable) as their interests may appear, (ii) in the case of each property related insurance policy, contain a mortgagee and/or lender loss payable clause or endorsement, reasonably satisfactory in form and substance to the Administrative Agent, that names the Collateral Agent as the loss payee thereunder and (iii) provide that the insurer will provide at least thirty (30) days' prior written notice to the Administrative Agent and Collateral Agent of any modification or cancellation of such policy (or at least ten (10) days' prior written notice to the Administrative Agent and Collateral Agent of any cancellation for non-payment of premium); provided that this clause (iii) shall not be required to be satisfied if the provider of such insurance policy is unwilling to provide such notice notwithstanding the Borrower's use of commercially reasonable efforts to obtain the same. In the event that the Borrower or any other Loan Party shall undertake to repair, restore, replace or otherwise remedy any damage, destruction, taking or breach of an obligation under a Project Document corresponding to a Recovery Event pursuant to the definition of "Net Cash Proceeds" with Restoration Proceeds, the Borrower shall, and shall cause the other Loan Parties to, (x) in the

case of Restoration Proceeds received prior to the Completion Date with respect to the Project, deposit such Restoration Proceeds into the Company Funds Accounts for application in accordance with this Agreement and the Disbursement Agreements and (y) in the case of any other Restoration Proceeds in excess of $1,000,000, follow reasonable disbursement procedures to be agreed to between the Borrower and the Administrative Agent for the release of such Restoration Proceeds in excess of such amount from an Investment Account for application toward such repair, restoration or remedy to the extent not required to be prepaid pursuant to Section 2.13. To the extent the Administrative Agent or the Collateral Agent receives any proceeds of any property or casualty insurance policy maintained by a Loan Party hereunder, so long as no Event of Default has occurred and is continuing, the Administrative Agent or the Collateral Agent, as applicable, shall promptly deliver such proceeds to the Borrower or the other applicable Loan Parties (unless otherwise required to be applied to the Loans pursuant to Section 2.13 or the comparable section of the Revolving Credit Agreement) to be utilized by such Loan Parties as otherwise permitted by the Loan Documents. In the event of any direct conflict between the terms of Exhibit K and this Section 5.05, the terms of Exhibit K shall control. Notwithstanding anything to the contrary contained herein, in the event that the Borrower or any other Loan Party fails to provide the Administrative Agent with evidence reasonably satisfactory to the Administrative Agent of the insurance coverage required by this Agreement, the Administrative Agent may purchase insurance at the Borrower's expense to protect the Administrative Agent's and the Secured Parties' interest in the Mortgaged Properties and other Collateral. Such insurance may, but need not, protect the Borrower's interest in the Mortgaged Properties or the other Collateral. The coverages that the Administrative Agent purchases may not pay any claim that the Borrower or any other Loan Party makes or any claim that is made against the Borrower or any other Loan Party in connection with the Mortgaged Properties or the other Collateral. The Borrower or any other Loan Party may later cancel any insurance purchased by the Administrative Agent, but only after providing the Administrative Agent with evidence reasonably satisfactory to the Administrative Agent that the Borrower or the other Loan Party has obtained the insurance required by this Agreement. If the Administrative Agent purchases insurance for the Mortgaged Properties and/or the other Collateral, the Borrower will be responsible for the costs of that insurance, including interest at the interest rate described in Section 2.09 for ABR Loans and any other charges imposed by the Administrative Agent in connection with the placement of insurance, until the effective date of the cancellation or expiration of such insurance. The costs of the insurance may, at the Administrative Agent's discretion, be added to the Borrower's total principal obligations owing to the Administrative Agent and the Secured Parties, and in any event shall be secured by the Liens on the Mortgaged Properties and the other Collateral created by the Loan Documents. It is understood and agreed that the costs of insurance obtained by the Administrative Agent may be more than the costs of insurance that the Borrower may be able to obtain on its own.

Section 5.06. Maintaining Records. The Borrower will, and will cause each other Loan Party to, keep proper books of record and account in which full, true and correct entries (in all material respects) in conformity with GAAP, to the extent required by GAAP, and all Legal Requirements (in all material respects) are made of all dealings and transactions in relation to its business and activities.

Section 5.07. Inspections. Subject to any applicable Gaming Laws restricting such actions, the Borrower will, and will cause each other Loan Party to, permit the Construction Consultant and any other authorized representatives designated by any Agent or any Lender to visit and inspect the Project or any other properties of the Loan Parties (in a manner intended not to disrupt normal business operations), to inspect, copy and take extracts from its and their financial and accounting records (to be used subject to customary confidentiality restrictions and to the extent permitted by law), and to discuss its and their affairs, finances and accounts with its and their officers and independent public accountants if requested by the Administrative Agent (provided that any designated representatives of the Borrower, if they so choose, shall be present at or participate in such discussions), all upon reasonable advance notice and at such reasonable times during normal business hours; provided that, notwithstanding anything to the contrary in any other Loan Document, unless an Event of Default shall have occurred and be continuing, the Borrower shall be responsible for the costs of only one such inspection in any Fiscal Year; provided further that only the Administrative Agent or another designated representative or consultant on behalf of the Lenders may inspect the Project or any other properties of the Loan Parties pursuant to the foregoing. Nothing contained in this Section 5.07 shall be deemed to restrict the right of the Construction Consultant to visit and inspect the Project or any other properties of the Loan Parties in connection with its role and duties under the Disbursement Agreements or to limit the Borrower's responsibility for the costs and expenses of any such visits and inspections by the Construction Consultant.

Section 5.08. Lenders Meetings.

The Borrower will, upon the request of the Administrative Agent or the Required Lenders, (x) participate in a conference call with the Administrative Agent and the Lenders once during each Fiscal Quarter and (y) in lieu of a conference call with the Administrative Agent and the Lenders in respect of the fourth Fiscal Quarter as provided in preceding clause (x), participate in a meeting with the Administrative Agent and the Lenders in respect of the fourth Fiscal Quarter, to be held at the Borrower's corporate offices (or at such other location as may be agreed to by the Borrower and the Administrative Agent) at such time as may be agreed to by the Borrower and the Administrative Agent; provided that, notwithstanding anything to the contrary in any Loan Document, the Borrower shall not be responsible for the costs of Lenders attending such meetings.

Section 5.09. Compliance with Laws, Material Contracts and Permits.

(a) The Borrower will comply, and will cause each other Loan Party and Unrestricted Subsidiary to comply, with the requirements of all applicable laws, rules, regulations and orders of any Governmental Authority (including all Environmental Laws and any laws related to campaign finance or political contributions), except to the extent noncompliance therewith could not reasonably be expected to (i) have, individually or in the aggregate, a Material Adverse Effect or (ii) cause a License Revocation; provided, however, that this Section 5.09(a) shall not apply to laws related to Taxes, which are the subject of Section 5.03.

(b) The Borrower will, and will cause each other Loan Party to, comply, duly and promptly, with its respective obligations and enforce all of its respective rights under all Material Contracts, except where the failure to so comply or enforce could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(c) The Borrower will, and will cause each other Loan Party to, from time to time obtain, maintain, retain, observe, keep in full force and effect and diligently comply with the terms, conditions and provisions of all Permits as shall now or hereafter be necessary under applicable laws, except, with respect to any such Permit, to the extent the noncompliance therewith could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(d) The Borrower will, and will cause each other Loan Party to, comply, duly and promptly, in all material respects with its respective obligations and enforce all of its respective rights under each ground lease under which the Borrower or any other Loan Party is the tenant and that is material to the Project, except where the failure to so comply or enforce could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

Section 5.10. Environmental.

(a) Environmental Disclosure. The Borrower will deliver to the Administrative Agent for distribution to the Lenders:

(i) promptly upon, and in any event within five (5) Business Days after knowledge thereof by any Loan Party, written notice describing in reasonable detail (1) any Release required to be reported to any federal, state or local governmental or regulatory agency under any applicable Environmental Laws and that, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect, or (2) any remedial action taken by any Loan Party or any other Person in response to (A) any Hazardous Materials Activities the existence of which could reasonably be expected to result in one or more Environmental Claims having, individually or in the aggregate, a Material Adverse Effect, or (B) any Environmental Claims that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect;

(ii) as soon as practicable, and in any event within five (5) Business Days, following the sending or receipt thereof by any Loan Party, a copy of any written communications with respect to (1) any Environmental Claims or Environmental Liabilities that, individually or in the aggregate, could reasonably be expected to give rise to a Material Adverse Effect, (2) any Release required to be reported to any federal, state or local governmental or regulatory agency that, individually or in the aggregate, could reasonably be expected to give rise to a Material Adverse Effect, (3) any request for information from any Governmental Authority that suggests such agency is investigating whether any Loan Party may be potentially responsible for any Hazardous Materials Activity that, individually or in the aggregate, could reasonably be expected to give rise to a Material Adverse Effect and (4) any written request for information from any Governmental Authority that suggests such Governmental Authority is investigating whether any Loan Party may be potentially responsible for any Release of Hazardous Materials that, individually or in the aggregate, could reasonably be expected to give rise to a Material Adverse Effect;

(iii) promptly upon, and in any event within five (5) Business Days of, the availability thereof, written notice describing in reasonable detail (1) any proposed acquisition of stock, assets, or property by any Loan Party that could reasonably be expected to (A) expose such Loan Party to, or result in, Environmental Claims or Environmental Liabilities that could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect or (B) affect the ability of any Loan Party to maintain in full force and effect all material Permits required under any applicable Environmental Laws for their respective operations and (2) any proposed action to be taken by any Loan Party to modify current operations in a manner that could reasonably be expected to subject such Loan Party to any additional material obligations or requirements under any Environmental Laws;

(iv) with reasonable promptness, such other documents and information as from time to time may be reasonably requested by the Administrative Agent in relation to any matters disclosed pursuant to this Section 5.10(a).

(b) Hazardous Materials Activities, Etc. The Borrower shall promptly take, and shall cause each other Loan Party promptly to take, any and all actions necessary to (i) cure any violation of applicable Environmental Laws by any Loan Party that could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect, and (ii) make an appropriate response to any Environmental Claim against any Loan Party and discharge any obligations such Loan Party may have to any Person thereunder where failure to do so could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

Section 5.11. Subsidiaries; Guarantors. In the event that any Person becomes a Subsidiary of the Borrower, such Subsidiary shall be a wholly owned Subsidiary of the Borrower and the Borrower shall (a) promptly (x) if such Subsidiary is the first Subsidiary of the Borrower, cause such Subsidiary to execute and deliver to the Administrative Agent the Subsidiary Guaranty and the Subordinated Intercompany Note, and (y) for each other Subsidiary, cause such Subsidiary to become a Subsidiary Guarantor under the Subsidiary Guaranty by executing and delivering to the Administrative Agent an executed counterpart to the Subordinated Intercompany Note and the Subsidiary Guaranty as provided for therein, (b) promptly cause such Subsidiary to become a "Grantor" under and as defined in the Pledge and Security Agreement by executing and delivering to the Administrative Agent and the Collateral Agent a joinder agreement in the form attached to the Pledge and Security Agreement and (c) within ten (10) Business Days (or such longer period as may be agreed to by the Administrative Agent and the Collateral Agent) take all such actions and execute and deliver, or cause to be executed and delivered, to the extent applicable, all such documents, instruments, agreements, and certificates as are similar to those described in Section 4.01(a), Section 4.01(b), Section 4.01(d), Section 4.01(e), Section 4.01(f), Section 4.01(k), Section 4.01(l), Section 4.01(m), Section 4.01(n), Section 4.01(o), Section 4.01(u) and Section 4.01(bb). With respect to each such Subsidiary, the Borrower shall promptly send to the Administrative Agent written notice setting forth with respect to such Person (i) the date on which such Person became a Subsidiary of the Borrower, and (ii) all of the data required to be set forth in Schedule 3.08 with respect to all Subsidiaries of the Borrower; provided, such written notice shall be deemed to supplement Schedule 3.08 for all purposes hereof.

Section 5.12. Additional Material Real Estate Assets. In the event that any Loan Party acquires any Real Property (including fee or leasehold interests but other than Excluded Leased Real Property) and such interest has not otherwise been made subject to the Lien of the Security Documents in favor of the Collateral Agent, for the benefit of Secured Parties, then the Borrower shall, or shall cause such other Loan Party to, within forty-five (45) Business Days (or such longer period as may be agreed to by the Administrative Agent) after acquiring such Real Property, take all such actions and execute and deliver, or cause to be executed and delivered, all such mortgages, assignments of leases and rents, title insurance policies, flood insurance, surveys, landlord estoppel certificates, legal opinions, subordination, non-disturbance and attornment agreements and other instruments and agreements similar to those required on the Closing Date under Section 4.01(d), Section 4.01(e), Section 4.01(l), Section 4.01(m), Section 4.01(n), Section 4.01(o) and Section 4.01(bb) with respect to each such Real Property that the Administrative Agent shall reasonably request to create in favor of the Collateral Agent, for the benefit of Secured Parties, a valid and, subject to any filing and/or recording referred to herein, perfected first priority security interest in such Real Property (subject to Senior Permitted Liens). In addition to the foregoing, the Borrower shall, or shall cause such other Loan Party to, at the request of the Required Lenders, deliver, from time to time, to the Administrative Agent and the Collateral Agent such appraisals as are required by law or regulation of Real Property with respect to which the Collateral Agent has been granted a Lien. Notwithstanding anything to the contrary in this Section 5.12, the Loan Parties shall not be required to (a) take the actions necessary to grant a perfected security interest in, or (b) obtain title insurance policies with respect to, the Excluded Leased Real Property or any Property acquired after the Closing Date to the extent that the Administrative Agent has determined in its sole discretion that the collateral value thereof is insufficient to justify the difficulty, time and/or expense of taking such actions or obtaining such policies. Additionally, following the acquisition of any Real Property by a Loan Party, the definitions, exhibits and schedules to this Agreement and any other Loan Document (including the Disbursement Agreements) related to descriptions of Real Property shall be deemed amended to the extent necessary to reflect such acquisition. Notwithstanding anything to the contrary in this Section 5.12, in the event Empire Sub II enters into an IDA Lease Agreement or an IDA Leaseback Agreement with the IDA with respect to the Entertainment Village, the Borrower shall promptly cause Empire Sub II and shall use commercially reasonable efforts to cause the IDA to enter into one or more Mortgages, substantially in the form of Exhibit C-5, with respect thereto but shall not otherwise be required to take any other action, execute or deliver (or cause to be executed or delivered) any other instrument or agreement or take or cause to be taken any other action pursuant to this Section 5.12 unless reasonably requested by the Administrative Agent (provided in no event shall the Borrower be required to purchase title insurance policies, obtain estoppel certificates or provide updated surveys with respect thereto).

Section 5.13. Interest Rate Protection.

(a) No later than the thirtieth (30^{th}) day after the Closing Date, the Borrower shall enter, and at all times thereafter the Borrower shall maintain in effect, one or more Hedging Agreements in form and substance reasonably satisfactory to the Administrative Agent, which Hedging Agreements shall effectively ensure that no less than 50% of the outstanding principal amount of the Loans bear interest at a fixed rate or is otherwise hedged to the reasonable satisfaction of the Administrative Agent, either by its terms or through the Borrower entering into such Hedging Agreements.

(b) For the avoidance of doubt, while Hedging Agreements described in Section 5.13(a) are required to be maintained at all times during the periods set forth therein, each individual Hedging Agreement is not, subject to such Hedging Agreements being in form and substance reasonably satisfactory to the Administrative Agent (including with respect to their duration), required to be of such duration.

Section 5.14. Further Assurances. At any time or from time to time upon the written request of the Administrative Agent, the Borrower will, and will cause the other Loan Parties to, at its and their expense, promptly execute, acknowledge and deliver such

further documents and do such other acts and things as the Administrative Agent may reasonably request in order to effect fully the purposes of the Loan Documents. In furtherance and not in limitation of the foregoing, the Borrower shall take, and shall cause the other Loan Parties to take, such actions as the Administrative Agent may reasonably request from time to time to ensure that the Obligations are guaranteed by the Subsidiary Guarantors and the Borrower and are secured by the Collateral (subject in each case to limitations contained in the Loan Documents with respect to (i) Excluded Collateral and (ii) any Collateral on which perfection action is not required to be taken by the Loan Documents). The Borrower shall execute and deliver any amendment to the Section 22 Lien Law Affidavit delivered on the Closing Date reasonably requested by the Administrative Agent in connection with any material revisions to the Building Budget from that submitted at or prior to the Closing Date, or to the extent otherwise required in order to maintain Lender's lien priority hereunder in accordance with applicable law, as determined by the Administrative Agent in its reasonable discretion.

Section 5.15. Proceeds and Revenues.

(a) The Borrower shall, and shall cause each other Loan Party to, use the proceeds of the Loans and the Revolving Loans only for the purposes specified in Section 3.13.

(b) Subject to the terms of the Disbursement Agreements the Borrower shall, and shall cause each of the other Loan Parties to, deposit in an Investment Account and, until utilized or disbursed in accordance with the Loan Documents, maintain on deposit in an Investment Account, all Cash and Cash Equivalents other than (i) On-Site Cash, (ii) Cash and Cash Equivalents required pursuant to Gaming Laws or by Gaming Authorities to be deposited into Gaming Reserves, (iii) Cash and Cash Equivalents held, pursuant to ordinary course operations, in payroll accounts of Persons providing the Loan Parties payroll services, (iv) Cash and Cash Equivalents on temporary deposit with, or held temporarily in escrow or trust by, other Persons pursuant to customary arrangements related to transactions otherwise permitted under the Loan Documents and solely containing funds for such purposes, (v) Cash and Cash Equivalents that in the ordinary course of business are not maintained on deposit in a bank or other deposit or investment account pending application toward working capital or other general corporate purposes of the Loan Parties, (vi) Cash and Cash Equivalents on deposit in 401(k), trust accounts (for the benefit of third parties) and pension accounts established in the ordinary course of business and solely containing funds for such purposes, (vii) Cash and Cash Equivalents on deposit in Excluded Accounts or otherwise constituting Excluded Collateral, (viii) Cash and Cash Equivalents provided as security to bonding companies, letter of credit providers, Governmental Authorities, service providers or hedge counterparties pursuant to Section 6.02(d), Section 6.02(s), Section 6.02(u), Section 6.02(v) or Section 6.02(bb) and (ix) proceeds of any FF&E Agreement or Specified FF&E Collateral.

(c) The Borrower shall cause the Sponsors to make the Required Equity Contributions (i) in an amount equal to the Golf Course Equity Amount for deposit into the Golf Course Equity Account and (ii) in such amounts and at such times as required pursuant to the Disbursement Agreements for deposit into the Company Funds Account.

Section 5.16. Post-Closing Matters. Notwithstanding anything to the contrary set forth in this Agreement, the Borrower agrees that the Borrower shall, or shall cause the other Loan Parties to, deliver to the Administrative Agent on behalf of the Lenders, the documents set forth on Schedule 5.16, in form and substance reasonably satisfactory to the Administrative Agent, and/or take the actions set forth on Schedule 5.16, in a manner reasonably acceptable to the Administrative Agent, on or before the deadlines set forth in Schedule 5.16 (as such deadlines may be extended by Administrative Agent in writing in its reasonable discretion). To the extent there is any conflict between the provisions of any Loan Document and Schedule 5.16, the provisions of Schedule 5.16 shall control.

Section 5.17. FF&E Agreements. On or prior to the time reasonably necessary in order for the Casino Opening Date and/or Full Opening Date, as applicable, to occur in accordance with the Disbursement Agreements, and to the extent necessary to permit the Borrower to procure the furniture, fixtures and equipment covered by FF&E Costs (after taking into consideration any other sources utilized or reasonably anticipated by the Borrower to be utilized in order to procure such furniture, fixtures and equipment), the Borrower shall have entered into definitive documentation (collectively, the "FF&E Agreements") pursuant to which the Borrower shall be permitted to borrow or finance (including pursuant to a lease) an amount sufficient to finance such FF&E Costs and the Administrative Agent shall have received fully-executed copies of such FF&E Agreements within five (5) Business Days of the execution thereof.

Section 5.18. Maintenance of Corporate Separateness. Neither the Borrower nor any of its Subsidiaries shall (i) make any payment to a creditor of any Unrestricted Subsidiary in respect of any liability of any Unrestricted Subsidiary (except to the extent of Investments permitted pursuant to Section 6.07(l), (m), (n) or (q)), and no bank account or similar account of any Unrestricted Subsidiary shall be commingled with any bank account or similar account of the Borrower or any of its Subsidiaries or (ii) take any action, or conduct its affairs in a manner, which is likely to result in the corporate existence of the Borrower or any of its Subsidiaries or Unrestricted Subsidiaries (to the extent then in existence) being ignored, or in the assets and liabilities of the Borrower or any of its Subsidiaries being substantively consolidated with those of any Unrestricted Subsidiary in a bankruptcy, reorganization or other insolvency proceeding.

Section 5.19. **Trust Fund Provisions**. The Borrower shall receive all disbursements of proceeds of Loans hereunder and hold the right to receive all such disbursements as a trust fund in accordance with the provisions of Section 13 of the Lien Law to be applied first for the purpose of paying the Costs of the Improvements incurred by the Borrower, and will apply all such disbursements first to the payment of the Costs of the Improvements incurred by the Borrower before using any part of such disbursements for any other purpose. The proceeds of the Loans shall be used solely for the payment of Building Loan Costs in accordance with the Building Budget and the Lien Law of the State of New York.

Section 5.20. **Maintenance of Ratings**. The Borrower shall use commercially reasonable efforts to maintain a public corporate family rating, a public corporate credit rating and a public facility rating with respect to the Term B Loans (but, in any such case, not any specific rating), respectively, from each of S&P and Moody's and the Administrative Agent shall have received copies of all such ratings (it being understood that "commercially reasonable efforts" shall, in any event, include the payment by the Borrower of customary rating agency fees and cooperation by the Borrower and its Subsidiaries with information and data requests by Moody's and S&P in connection with their ratings process).

ARTICLE VI.

NEGATIVE COVENANTS

The Borrower covenants and agrees that until payment in full of all Obligations the Borrower shall perform, and shall cause each of the other Loan Parties to perform, all covenants in this Article VI.

Section 6.01. **Indebtedness**. The Borrower shall not, and it shall not permit any other Loan Party to, directly or indirectly, create, incur, assume, issue or guaranty, or otherwise become or remain directly or indirectly liable with respect to, any Indebtedness except:

(a) the Obligations;

(b) Indebtedness of any Loan Party to any other Loan Party; provided, that (i) all such Indebtedness shall be unsecured and evidenced by, and subject to the terms and conditions of, the Subordinated Intercompany Note, which note shall be subject to a Lien pursuant to the Pledge and Security Agreement and (ii) any payment by any such Loan Party under any Guarantee of the Obligations shall result in a *pro tanto* reduction of the amount of any Indebtedness owed by such Loan Party to such other Loan Party for whose benefit such payment is made;

(c) Indebtedness of any Loan Party in respect of a deposit, surety or other bond or other similar instrument required to be provided to the Gaming Authorities in accordance with subdivision 1 of Section 1315 of the Racing, Pari-Mutuel Wagering and Breeding Law and 9 NYCRR Section 5301.9(a) in an aggregate principal amount not to exceed $65,142,588 less any amounts that have been reimbursed, drawn or returned thereunder;

(d) Indebtedness incurred by a Loan Party arising from agreements providing for indemnification, adjustment of purchase price or similar obligations in connection with permitted acquisitions or dispositions of any business or assets of such Loan Party;

(e) Indebtedness which may be deemed to exist pursuant to any performance, surety, statutory, appeal or similar obligations incurred in the ordinary course of business;

(f) Guarantees in the ordinary course of business of the obligations of suppliers, customers, franchisees and licensees of the Loan Parties not to exceed $2,500,000 in the aggregate at any time;

(g) Indebtedness in respect of netting services, cash management services, overdraft protections and otherwise in connection with deposit accounts or securities accounts, in each case, to the extent related to ordinary course business operations;

(h) Guarantees by a Loan Party of Indebtedness or other obligations of another Loan Party with respect to Indebtedness otherwise permitted to be incurred pursuant to this Section 6.01;

(i) Indebtedness existing on the date of this Agreement and set forth in Schedule 6.01, but not any extensions, renewals or replacements of such Indebtedness except (i) renewals and extensions provided for in the agreements evidencing any such Indebtedness as the same are in effect on the date of this Agreement and (ii) refinancings and extensions of any such Indebtedness to the extent that the same constitutes Permitted Refinancing Indebtedness;

(j) Capital Lease Obligations and purchase money Indebtedness (including pursuant to the FF&E Agreements) in a combined aggregate amount not to exceed at any time outstanding $40,000,000; provided, that with respect to purchase money Indebtedness, such Indebtedness (i) shall at the time of incurrence constitute not less than 70% and not more than 100% (plus the aggregate amount

of any fees, costs and expenses paid to the lender providing such Indebtedness) of the aggregate consideration paid with respect to such assets and (ii) shall (except with respect to refinancings of Indebtedness otherwise permitted pursuant to this clause (j)) be incurred prior to or within 180 days after the acquisition of such assets;

(k) Indebtedness related to Hedging Agreements not prohibited by Section 6.17;

(l) Subordinated Indebtedness of the Borrower (it being acknowledged that the Completion Guarantor may fund its obligations under the Completion Guaranty in the form of Subordinated Indebtedness); provided that, the Net Cash Proceeds of such Subordinated Indebtedness (other than Subordinated Indebtedness provided by the Sponsors the proceeds of which are utilized solely for Specified Equity Contributions, payments required by the Completion Guaranty, payments made in accordance with either Disbursement Agreement, payments of Project Costs or Consolidated Capital Expenditures made in accordance with Section 6.08(c)) shall be applied within one (1) Business Day of the receipt of such proceeds in accordance with Section 2.14(b);

(m) Indebtedness in respect of bid, performance or surety bonds, letters of credit in order to provide security for workers' compensation claims, self-insurance obligations, bonds securing the performance of judgments or a stay of process in proceedings to enforce a contested liability or in connection with any order or decree in any legal proceeding and bank overdrafts issued for the account of any Loan Party, in each case incurred in the ordinary course of business; provided that any obligations arising in connection with such bank overdraft Indebtedness is extinguished within five (5) Business Days;

(n) Indebtedness consisting of the financing of insurance premiums so long as the aggregate amount of such Indebtedness is not in excess of the amount of the unpaid cost of such insurance;

(o) other Indebtedness of the Loan Parties in an aggregate outstanding principal amount not to exceed at any time outstanding $10,000,000;

(p) Indebtedness of the Loan Parties under the Revolving Facility Documents in an aggregate outstanding principal amount not to exceed $15,000,000 (as reduced by any permanent reductions to the Revolving Commitments thereunder (other than pursuant to the incurrence of Permitted Refinancing Indebtedness in respect thereof));

(q) to the extent they constitute Indebtedness, indemnities under the Project Documents; and

(r) Indebtedness of the Loan Parties under credit cards or similar arrangements in an amount from time to time outstanding not to exceed $100,000.

Section 6.02. Liens. The Borrower shall not, and it shall not permit any other Loan Party to, directly or indirectly, create, incur, assume or permit to exist any Lien on or with respect to the Pledged Collateral or any other property or asset of any kind of any Loan Party, whether now owned or hereafter acquired, or any income or profits therefrom, except:

(a) Liens in favor of the Collateral Agent or the Administrative Agent for the benefit of Secured Parties granted pursuant to any Loan Document;

(b) Liens for Taxes (i) not yet due and payable (or not delinquent by more than 30 days), (ii) that are payable without penalty (and no enforcement rights with respect thereof are effective) or (iii) that are being contested in compliance with Section 5.03, or are with respect to Taxes that are not material and are being contested in good faith by appropriate proceedings with provision for adequate reserves;

(c) statutory Liens of landlords, banks (and rights of set-off), carriers, warehousemen, mechanics, repairmen, workmen and materialmen, and other similar Liens imposed by law, in each case incurred in the ordinary course of business or in connection with the development, construction or operation of the Project (i) for amounts not yet overdue or (ii) for amounts that are overdue and that (in the case of any such amounts overdue for a period in excess of ten (10) Business Days) are either insured over, in a manner reasonably satisfactory to the Collateral Agent, by the Title Company or are being contested in good faith by appropriate proceedings, so long as such reserves or other appropriate provisions, if any, as shall be required by GAAP shall have been made for any such contested amounts and, in the case of a lien with respect to any Collateral, such proceedings (or orders entered in connection with such proceedings) have the effect of preventing the forfeiture or sale of the property subject to any such Lien;

(d) Liens incurred or Liens on deposits made in the ordinary course of business in connection with workers' compensation, unemployment insurance and other types of social security, or to secure the performance of tenders, statutory obligations, surety, stay, judgment and appeal bonds, bids, leases, government contracts, trade contracts, performance and return-of-money bonds and other similar obligations (exclusive of obligations for the payment of borrowed money), so long as no foreclosure, sale or similar proceedings have been commenced or, if commenced, have been stayed, with respect to any portion of the Collateral on account thereof;

(e) easements, rights-of-way, navigational servitudes restrictions, encroachments, and other encumbrances, minor defects or irregularities in title, in each case which do not and will not interfere in any material respect with the ordinary conduct of operations of the Project or of the business of the Loan Parties;

(f) any interest or title of a lessor, sublessor, licensor or sublicensor under any lease of real estate or personal property permitted hereunder;

(g) Liens solely on any cash earnest money deposits made by any Loan Party in connection with any letter of intent or purchase agreement permitted hereunder;

(h) purported Liens evidenced by the filing of precautionary UCC financing statements relating solely to operating leases of personal property entered into in the ordinary course of business;

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

(j) any zoning, land use, building or other law or right reserved to or vested in any governmental office or agency to control or regulate the use of any real property;

(k) licenses of patents, trademarks and other Intellectual Property rights granted by any Loan Party in the ordinary course of business;

(l) Liens existing on the date of this Agreement and set forth in Schedule 6.02 or on any title policy delivered pursuant to Section 4.01(l); provided that such Liens shall secure only those obligations which they secure on the date hereof and Permitted Refinancing Indebtedness in respect thereof and, in the case of Liens described in Schedule 6.02, shall encumber only those assets which they encumber as of the date hereof;

(m) Liens securing Indebtedness permitted pursuant to Section 6.01(j); provided that any such Lien shall encumber (i) only the assets (including Specified FF&E Collateral and the proceeds thereof) acquired, leased, financed or refinanced with the proceeds of such Indebtedness (all of which assets, other than those relating to heating, ventilation and air conditioning, shall be of a type that is readily removable from, and not integral to, the structure of the Project), (ii) other assets (all of which assets, other than those relating to heating, ventilation and air conditioning, shall be of a type that is readily removable from, and not integral to, the structure of the Project) acquired, leased financed or refinanced with Indebtedness permitted under Section 6.01(j) (including Specified FF&E Collateral and any proceeds thereof) owing to the same Person or an Affiliate of such Person that is secured by the assets described in clause (i), and (iii) in the case of clauses (i) and (ii), accounts holding solely proceeds of such financings or proceeds of any assets acquired with the proceeds of any such financings; provided, further, that in connection with the granting of any Liens permitted by this Section 6.02(m), the Administrative Agent shall be authorized to direct the Collateral Agent to (and shall at the request of the Borrower) take any actions contemplated by Section 8.09(a) in connection therewith (including, by executing appropriate lien releases or, at the request of the Borrower, lien subordination agreements in favor of the holder or holders of such Liens, in either case with respect to the equipment or other assets (including Specified FF&E Collateral) subject to such Liens);

(n) bankers' Liens, rights of setoff and other similar Liens existing solely with respect to Cash and Cash Equivalents on deposit in one or more accounts maintained by any Loan Party, in each case granted in the ordinary course of business in favor of the bank or banks or securities intermediaries with which such accounts are maintained, securing amounts owing to such bank or securities intermediary with respect to cash management and operating and securities account arrangements, including those involving pooled accounts and netting arrangements; provided that in no case shall any such Liens secure (either directly or indirectly) the repayment of any Indebtedness;

(o) space leases and subleases to the extent permitted under Section 6.03(b) and the IDA Lease Agreement, and any leasehold mortgage in favor of any party financing the lessee under any such lease or sublease; provided, that no Loan Party is liable for the payment of any principal of, or interest, premiums or fees on, such financing;

(p) so long as the applicable Loan Party is using commercially reasonable efforts to terminate such filings, UCC financing statements or other public notices of Liens (i) filed by Persons without the authorization of the applicable Loan Party and (ii) purporting to secure obligations that either (x) do not exist or (y) are not secured by Liens on such Loan Party's properties (other than UCC financing statements described in Section 6.02(h));

(q) to the extent constituting Liens, any obligations or duties of any Loan Party to any municipality or public authority with respect to any franchise, grant, license or permit provided by such municipality or public authority to such Loan Party in furtherance of the ordinary course conduct of the business of such Loan Party;

(r) Liens imposed pursuant to Section 2-507 of the UCC;

(s) Liens arising out of judgments, attachments or awards not resulting in an Event of Default and in respect of which such Loan Party shall in good faith be prosecuting an appeal or proceedings for review in respect of which there shall be secured a subsisting stay of execution pending such appeal or proceedings and, in the case of any such Lien which has or may become a Lien against any of the Collateral, at the option and at the request of the Administrative Agent, to the extent such Lien is in an amount in excess of $1,000,000, the appropriate Loan Party shall maintain cash reserves or a credit worthy bond in an amount sufficient to pay and discharge such Lien and the Administrative Agent's reasonable estimate of all interest and penalties related thereto;

(t) Liens on insurance policies and the proceeds thereof (whether accrued or not), in each case, securing the financing of premiums with respect thereto pursuant to Section 6.01(n);

(u) on or prior to the Completion Date, Liens incurred on cash collateral not to exceed $5,000,000 during the term of this Agreement disbursed pursuant to Section 4.7 of the Building Loan Disbursement Agreement and provided to bonding companies, Governmental Authorities, providers of services or letter of credit providers to any such Persons, in each case in connection with the provision of security to providers of services, or Governmental Authorities with jurisdiction over services to be provided, in connection with the development of the Project; provided that to the extent provided in connection with bonding or letters of credit, such Liens shall be limited to cash collateral no greater than 105% of the face amount of the applicable bonds or letters of credit;

(v) Liens on cash collateral securing Indebtedness permitted pursuant to Section 6.01(c), provided that (x) such cash collateral shall not exceed in the aggregate the principal amount of Indebtedness permitted pursuant to such Section 6.01(c) and (y) such liens shall be limited to cash collateral provided to support such Indebtedness;

(w) other Liens securing liabilities in an aggregate amount not to exceed $10,000,000 at any time outstanding;

(x) so long as the Intercreditor Agreement is in effect and subject to the terms thereof, Liens on the Collateral securing Revolving Obligations under the Revolving Facility Documents and the Specified Cash Management Agreements (as defined in the Revolving Credit Agreement) that are *pari passu* with the Liens granted to the Secured Parties under the Security Documents;

(y) leases or subleases granted to third parties in accordance with any applicable terms of this Agreement and the Collateral Documents and not interfering in any material respect with the ordinary conduct of the business of the Loan Parties;

(z) Liens on property of a Person existing at the time such Person became a Loan Party, is merged into or consolidated with or into, or wound up into, Borrower or any other Loan Party; provided, that such Liens were in existence prior to the consummation of, and were not entered into a contemplation of, such acquisition, merger or consolidation or winding up and do not extend to any other assets other than those of the Person acquired by, merged into or consolidated with Borrower or such other Loan Party;

(aa) Liens on property existing at the time of acquisition thereof by Borrower or any other Loan Party; provided that such Liens were in existence prior to the consummation of, and were not entered into in contemplation of, such acquisition and do not extend to any other assets other than those so acquired;

(bb) Liens incurred on cash collateral not to exceed $4,000,000 at any time outstanding securing obligations to hedge counterparties under Hedging Agreements; and

(cc) Liens granted by a Loan Party to secure performance in connection with operating leases of personal property made in the ordinary course of business to which such Loan Party is a party as lessee (including leases of Specified FF&E Collateral), so long as such Liens attach only to the assets subject to such operating leases.

Section 6.03. Real Property.

(a) The Borrower shall not, and shall not permit any other Loan Party to, acquire from a party that is not a Loan Party a fee, leasehold, material easement or other material interest in any real property (excluding the acquisition (but not the exercise) of any options to acquire any such interests in real property) unless (i) the Borrower or such other Loan Party shall have delivered to the Administrative Agent, on behalf of the Secured Parties, a Phase I environmental site assessment report (dated not later than six (6) months prior to such acquisition) with respect to such real property, reasonably satisfactory to the Administrative Agent in scope and form, along with a corresponding reliance letter from an environmental consultant reasonably satisfactory to the Administrative Agent and (ii) if Hazardous Materials were found in, on or under such real property pursuant to such Phase I report in a manner that could reasonably be expected to result in a material Environmental Liability to such Person or a Phase II report is recommended by the findings of such Phase I report, the Borrower or such other Loan Party shall have delivered to the Administrative Agent, on behalf of the Secured Parties (A) a Phase II report with respect to such real property along with a corresponding reliance letter from an environmental consultant reasonably satisfactory to the Administrative Agent, indicating, in form and substance reasonably satisfactory

to the Administrative Agent, that no Hazardous Materials were found in, on or under such real property in a manner that could reasonably be expected to result in a material Environmental Liability to such Person or (B) to the extent clause (A) above is inapplicable and if requested by the Administrative Agent, an environmental indemnity agreement, in form and substance reasonably satisfactory to the Administrative Agent, with respect to such real property pursuant to which an indemnitor reasonably satisfactory to the Administrative Agent indemnifies the Borrower or such other Loan Party and the Secured Parties from any and all damages or other liabilities relating to or arising from Hazardous Materials then in, on or under such real property or otherwise caused by or attributable to such indemnitor or the Loan Party acquiring an interest in real property. Notwithstanding anything to the contrary in this Section 6.03(a), the Loan Parties shall not be required to deliver a Phase I Report or a Phase II Report with respect to (i) the acquisition of a fee interest in the Property underlying the Ground Lease, the Entertainment Village Lease and the Golf Course Lease pursuant to the Purchase Option Agreement, (ii) any fee, leasehold, easement or other interest in real property acquired after the Closing Date, in each case, to the extent the Administrative Agent determines that the size, location and proposed use thereof are insufficient to justify the time and expense of obtaining such reports or (iii) any Excluded Leased Real Property (other than any Real Property described in clause (f) of the definition thereof).

(b) The Borrower shall not, and shall not permit any other Loan Party to, enter into any space leases or subleases of any Real Property as lessor or sublessor with any party that is not a Loan Party unless (i) such transaction, lease or sublease is entered into either (A) pursuant to Section 6.09(b) or otherwise in the ordinary course of business for the purposes of provision of services to patrons or anticipated patrons of the Project and, in the Borrower's good faith judgment, is reasonably expected to enhance the operation of the Project or (B) pursuant to Section 6.09(g), and (ii) no gaming, hotel or casino operations (other than the operation of arcades and games for minors) may be conducted on any space that is subject to such transaction, lease or sublease other than by and for the benefit of the Loan Parties; provided, that (x) the Administrative Agent shall, upon the Borrower's request, agree to direct the Collateral Agent to provide the tenant under any such lease or sublease with a non-disturbance and attornment agreement in form and substance reasonably satisfactory to the Administrative Agent and (y) unless the Administrative Agent shall otherwise waive such requirement, with respect to any such lease or sublease having reasonably anticipated annual rents (whether due to base rent, fixed rents, reasonably anticipated percentage rents or other reasonably anticipated rental income from such lease or sublease) in excess of $500,000 during the term of such lease or sublease, the applicable Loan Party(ies) shall enter into, and cause the tenant under any such lease or sublease to enter into with the Collateral Agent a subordination, non-disturbance and attornment agreement, in each case in form and substance reasonably satisfactory to the Administrative Agent. This clause (b) shall not apply to the IDA Lease Agreement.

Section 6.04. No Further Negative Pledges. Except with respect to (a) specific property encumbered to secure payment of particular Indebtedness, liabilities or leases permitted hereunder or to be sold pursuant to an executed agreement with respect to a permitted Asset Sale or other permitted disposition, (b) restrictions by reason of customary provisions restricting assignments, subletting or other transfers contained in leases, licenses (including intellectual property licenses and Gaming Licenses) and other agreements or restrictions on cash or other deposits entered into in the ordinary course of business (provided that such restrictions are limited to such leases, licenses or agreements or the property or assets subject to such Liens, leases, licenses or agreements, as the case may be), (c) restrictions under applicable Gaming Laws, (d) the Revolving Facility Documents, (e) conditions set forth in Indebtedness incurred pursuant to Section 6.01(j), and the guarantees, collateral documents or intercreditor agreements relating thereto, in each case, to the extent such conditions have been satisfied in connection with the initial incurrence of the applicable Indebtedness, and (f) the Gaming License, the Borrower shall not, and shall not permit any other Loan Party to, enter into any agreement prohibiting the creation or assumption of any Lien upon any of its properties or assets to secure the Obligations, whether now owned or hereafter acquired, and the Borrower shall not permit the Equity Pledgor to enter into any agreement prohibiting the creation or assumption of any Lien upon any Pledged Collateral (as defined in the Equity Pledge Agreement) to secure the Obligations.

Section 6.05. Restricted Junior Payments. The Borrower shall not, and it shall not permit any other Loan Party, through any manner or means or through any other Person to, directly or indirectly, declare, order, pay, make or set apart any sum for any Restricted Junior Payment other than:

(a) so long as no Default under Section 7.01(c) or Section 7.01(h) nor any Event of Default shall have occurred and be continuing (or would result therefrom), dividends or other distributions of amounts reimbursed under Section 4.4 of the Building Loan Disbursement Agreement or under Section 4.2 of the Project Disbursement Agreement;

(b) dividends or other payments (including pursuant to a tax sharing agreement) to the direct or indirect owners of the Borrower with respect to any taxable year during which the Borrower is a Pass Through Entity or a member of consolidated, combined or unitary tax group of which a direct or indirect owner of the Borrower is the common parent, in an aggregate amount not to exceed the Tax Amount for such taxable year (it being understood and agreed that (i) such dividends or other payments may be paid on a quarterly basis based on estimates of the Tax Amount made by the Borrower in good faith, (ii) without limiting the provisions of preceding sub-clause (i), to the extent that any such dividends or other distributions exceed (or are less than) the Tax Amount for such taxable year as a result of such quarterly estimates, the amount permitted to be paid pursuant to this clause (b) in the immediately succeeding taxable year (or, if necessary, the subsequent taxable years) shall, without duplication, be reduced or increased, as applicable, by a like amount and (iii) any portion of the Tax Amount for such taxable year that is attributable to an Unrestricted

Subsidiary shall be payable pursuant to this clause (b) only to the extent cash distributions are received by the Loan Parties from such Unrestricted Subsidiaries);

(c) dividends, other distributions or payments to the Equity Pledgor or Empire, such dividends and distributions not to exceed in any Fiscal Year 1.00% of the net revenues of the Loan Parties in such Fiscal Year;

(d) so long as no Default under Section 7.01(c) or Section 7.01(h) nor any Event of Default has occurred and is then continuing (or would result therefrom), dividends or other distributions (not in excess of $1,000,000 in the aggregate during the term of this Agreement) to direct or indirect parent entities of the Borrower in amounts necessary to repurchase Capital Stock in, or Indebtedness of, such parent entities to the extent required by the Gaming Authorities for not more than the fair market value thereof in order to avoid the suspension, revocation or denial by the Gaming Authorities of a Gaming License; provided, that so long as such efforts do not jeopardize any such Gaming License, such parent entities shall have diligently and in good faith attempted to find a third-party purchaser(s) for such Capital Stock or Indebtedness and no third-party purchaser(s) for such Capital Stock or Indebtedness acceptable to the Gaming Authorities was willing to purchase such Capital Stock or Indebtedness within a time period acceptable to the Gaming Authorities;

(e) so long as (x) no Default or Event of Default shall have occurred and be continuing or shall be caused thereby and (y) the pro forma First Lien Leverage Ratio as of the last day of the most recently ended Fiscal Quarter for which financial statements have been delivered with respect thereto pursuant to Section 5.01(b) or Section 5.01(c) is not greater than 2.75:1.00 (determined as if such dividend, distribution or other payment, together with any other dividend, distribution or other payment made in reliance on this clause (e) and any Investments made in reliance on Section 6.07(m) and, in each case, any Indebtedness incurred in connection therewith or with respect thereto after the last day of such Fiscal Quarter, were made or incurred on such last day), Restricted Junior Payments on any date in an amount not to exceed the Available Amount on such date; provided that in no case shall dividends be made pursuant to this clause (e) prior to the Full Opening Date; and

(f) to the extent constituting Restricted Junior Payments, payments associated with "phantom equity" compensatory arrangements entered into in the ordinary course of business with officers and employees of the Loan Parties not to exceed $1,000,000 in the aggregate during the term of this Agreement.

Section 6.06. Restrictions on Subsidiary Distributions. Except as provided herein and in the Revolving Credit Agreement, the Borrower shall not, and it shall not permit any other Loan Party to, create or otherwise cause or suffer to exist or become effective, any consensual encumbrance or restriction of any kind on the ability of any Loan Party (other than the Borrower) to (a) pay dividends or make any other distributions on any of its Capital Stock owned by the Borrower or any other Loan Party, (b) repay or prepay any Indebtedness owed by such Loan Party to the Borrower or any other Loan Party, (c) make loans or advances to the Borrower or any other Loan Party, or (d) transfer (other than by the granting of a Lien to the extent permitted by Section 6.02 and Section 6.04) any of its property or assets to the Borrower or any other Loan Party other than restrictions (i) in agreements evidencing Indebtedness permitted by Section 6.01(j) or any related collateral documents that impose restrictions on the property so acquired, (ii) by reason of customary provisions restricting assignments, subletting or other transfers contained in leases, licenses, joint venture agreements and other agreements entered into in the ordinary course of business, (iii) that are or were created by virtue of any transfer of, agreement to transfer or option or right with respect to any property, assets or Capital Stock not otherwise prohibited under this Agreement, (iv) any instrument governing Indebtedness or equity securities of a Person acquired by a Loan Party as in effect at the time of such acquisition (except to the extent such Indebtedness was incurred in connection with or in contemplation of such acquisition), which encumbrance or restriction is not applicable to any Person, or the properties or assets of any Person, other than the Person, or the property or assets of the Person, so acquired, (v) with respect to restrictions of the type set forth in clause (d) above, as set forth in any agreement relating to Indebtedness permitted to be secured by Permitted Liens so long as such restrictions only extend to the assets secured by such Permitted Liens, and (vi) as required by applicable law.

Section 6.07. Investments. The Borrower shall not, and it shall not permit any other Loan Party to, directly or indirectly, make or own any Investment in any Person, including any Unrestricted Subsidiary or Joint Venture, except:

(a) Investments in Cash and Cash Equivalents;

(b) equity Investments owned as of the Closing Date in any of its Subsidiaries and equity Investments made after the Closing Date in connection with the initial formation and capitalization of any Person that becomes, concurrently with such Investment, a Subsidiary Guarantor;

(c) Investments (i) in any Securities received in satisfaction or partial satisfaction of obligations from financially troubled account debtors and (ii) in the form of deposits, prepayments and other credits to lessors, suppliers or utilities made in the ordinary course of business consistent with the applicable past practices of the Borrower or such Loan Party, as applicable;

(d) (i) Investments by the Borrower in any Subsidiary Guarantor and (ii) Investments by any Subsidiary Guarantor in the Borrower or any other Subsidiary Guarantor; provided that any such Investments in the form of intercompany loans shall only be permitted to the extent in compliance with Section 6.01(b);

(e) loans and advances to employees of the Loan Parties made in the ordinary course of business in an aggregate principal amount not to exceed $1,000,000 at any time outstanding;

(f) Investments existing on the date of this Agreement and set forth in Schedule 6.07;

(g) Investments received in connection with the bankruptcy or reorganization of, or settlement of delinquent accounts and disputes with, customers and suppliers, in each case in the ordinary course of business;

(h) Investments consisting of Securities and other non-cash consideration received as consideration for an Asset Sale permitted by Section 6.09;

(i) purchases or other acquisitions of inventory, materials, equipment and Intellectual Property in the ordinary course of business;

(j) extensions of trade credit in the ordinary course of business (including promotions and advances to and receipt of checks and other instruments from patrons of the Loan Parties' gaming operations consistent with ordinary course gaming operations, including advances and other credit arrangements pursuant to Section 1339 of the New York State Racing, Pari-Mutuel Wagering and Breeding Law);

(k) Investments under any Hedging Agreements permitted by Section 6.17;

(l) Investments in an Unrestricted Subsidiary or a Joint Venture formed or otherwise entered into pursuant to Section 6.15 for the primary purposes of providing food and beverage venues or other amenities to or for the benefit of patrons of the Project located at or near the Project so long as no other investor in any such Unrestricted Subsidiary or Joint Venture is an Affiliate of the Borrower; provided that the aggregate amount of all Investments made pursuant to this clause (l) shall not exceed $10,000,000;

(m) so long as (x) no Default or Event of Default shall have occurred and be continuing or shall be caused thereby and (y) the pro forma First Lien Leverage Ratio as of the last day of the most recently ended Fiscal Quarter for which financial statements have been delivered with respect thereto pursuant to Section 5.01(b) or Section 5.01(c) is not greater than 3.00:1.00 (determined as if such Investment, together with any other Investment made in reliance on this clause (m) and all Restricted Payments made in reliance on Section 6.05(e) and, in each case, any Indebtedness incurred in connection therewith or with respect thereto after the last day of such Fiscal Quarter, were made or incurred on such last day), Investments on any date in an amount not to exceed the Available Amount on such date; provided that in no case shall Investments be made pursuant to this clause (m) prior to the Full Opening Date;

(n) other Investments in an aggregate amount not to exceed $7,500,000.

(o) loans or advances to employees or directors or former employees or directors to fund the exercise price of options granted under Empire's stock option plans or agreements or employments agreements, as approved by Empire's Board of Directors (provided that the amount of such loans and advances shall be contributed to the Borrower in Cash as common equity);

(p) Investments consisting of securities or other obligations received in settlement of debt created in the ordinary course of business and owing to such Loan Party or in satisfaction of judgments; and

(q) Investments on any date in an amount not to exceed the Permitted Equity Contribution Amount on such date.

Section 6.08. Financial Covenants.

(a) Interest Coverage Ratio. Beginning with the first full Fiscal Quarter following the Full Opening Date, the Borrower shall not permit the Interest Coverage Ratio as of the last day of any Fiscal Quarter to be less than the applicable correlative ratio set forth on Schedule 6.08; provided that for purposes of determining the amount of Consolidated Adjusted EBITDA and Consolidated Cash Interest Expense when determining the Interest Coverage Ratio for the first, second and third full Fiscal Quarters following the Full Opening Date, (i) such Consolidated Adjusted EBITDA shall be an amount equal to the sum of (I) Consolidated Adjusted EBITDA determined for the period commencing with the first full Fiscal Quarter following the Full Opening Date through the last day of the Fiscal Quarter then being tested and (II) the amount set forth in Schedule 1.01(b) applicable to the Fiscal Quarter then being tested and (ii) such Consolidated Cash Interest Expense shall be an amount equal to the sum of such Consolidated Cash Interest Expense determined for the period commencing with the first full Fiscal Quarter following the Full Opening Date through the last day of the Fiscal Quarter then being tested multiplied by a factor of 4, 2 and 4/3, respectively.

(b) First Lien Leverage Ratio. Beginning with the first full Fiscal Quarter following the Full Opening Date, the Borrower shall not permit the First Lien Leverage Ratio as of the last day of any Fiscal Quarter, to exceed the applicable correlative ratio set forth on Schedule 6.08; provided that for purposes of determining the amount of Consolidated Adjusted EBITDA when determining the First Lien Leverage Ratio for the first, second and third full Fiscal Quarters following the Full Opening Date, such Consolidated Adjusted EBITDA shall be an amount equal to the sum of (i) Consolidated Adjusted EBITDA determined for the period commencing with the first full Fiscal Quarter following the Full Opening Date through the last day of the Fiscal Quarter then being tested and (ii) the amount set forth in Schedule 1.01(b) applicable to the Fiscal Quarter then being tested.

(c) Maximum Consolidated Capital Expenditures. The Borrower shall not, and it shall not permit the other Loan Parties to, make or incur Consolidated Capital Expenditures, in any Fiscal Year, in an aggregate amount for the Borrower and the other Loan Parties, in excess of the correlative amount set forth on Schedule 6.08. Notwithstanding the foregoing, (i) the applicable amounts on Schedule 6.08 shall be increased from time to time by the Permitted Equity Contribution Amount or proceeds of Subordinated Indebtedness for application to Consolidated Capital Expenditures (other than proceeds of Specified Equity Contributions, proceeds otherwise applied to the repayment of Indebtedness, payments required by the Completion Guaranty, payments made in accordance with either Disbursement Agreement or payments of Project Costs) but only to the extent such proceeds are contributed and/or extended and so applied for Consolidated Capital Expenditures during the relevant Fiscal Year, (ii) if any amount referred to in the table on Schedule 6.08 expended hereunder is not expended in the Fiscal Year for which it is permitted, 75% of any such non-expended amounts (the "Carryover Amount") may be carried over for expenditure in the next succeeding Fiscal Year (with amounts expended in any Fiscal Year applied first against the Carryover Amount (if any), second against amounts set forth on Schedule 6.08 in respect of such Fiscal Year and third against the Additional Capital Expenditures Amount), (iii) payments made with the Net Cash Proceeds of Asset Sales and Recovery Events (in each case, without giving effect to the provisos contained in the definition thereof) in accordance with the definition of Net Cash Proceeds and contemporaneous exchanges or trade-ins of equipment or inventory (to the extent of the fair market value of any such exchanged or traded-in equipment or inventory), shall in each case not be considered Consolidated Capital Expenditures for purposes of this Section 6.08(c), (iv) an additional amount equal to the aggregate fair market value (as determined by the Borrower in good faith) of Property (other than Cash or Cash Equivalents) received by the Borrower after the Full Opening Date as equity capital contributions (the "Additional Capital Expenditures Amount") shall be available to make Consolidated Capital Expenditures, (v) without duplication of preceding clause (iii), Consolidated Capital Expenditures made in repair, replacement or restoration as a result of a Recovery Event in aggregate amount not to exceed the deductible under the insurance policy pursuant to which the Borrower has received Net Cash Proceeds in respect of such Recovery Event, shall in each case not be considered Consolidated Capital Expenditures for purposes of this Section 6.08(c), (vi) expenditures made with the Available Amount shall not be considered Capital Expenditures for purposes of this Section 6.08(c), and (vii) Golf Course Expenditures in an amount not to exceed $25,000,000 shall not be considered Consolidated Capital Expenditures for purposes of this Section 6.08(c).

Section 6.09. Fundamental Changes; Disposition of Assets. The Borrower shall not, and it shall not permit any other Loan Party to, merge or consolidate, or liquidate, wind-up or dissolve itself (or suffer any liquidation or dissolution), or convey, sell, lease or sub-lease (as lessor or sublessor), exchange, transfer or otherwise dispose of, in one transaction or a series of transactions, all or any part of its business, assets or property of any kind whatsoever, whether real, personal or mixed and whether tangible or intangible, whether now owned or hereafter acquired, except:

(a) (x) (i) any Subsidiary Guarantor may be liquidated, wound up or dissolved, with the result that its assets (including licenses), if any, and ongoing business are distributed to the Borrower or any other Subsidiary Guarantor, (ii) all or any part of any Subsidiary Guarantor's business, property or assets may be conveyed, sold, leased, transferred or otherwise disposed of, in one transaction or a series of transactions, to the Borrower or any other Subsidiary Guarantor or (iii) any Subsidiary Guarantor may be merged with or into the Borrower or any other Subsidiary Guarantor; provided, in the case of any such merger involving the Borrower, the Borrower shall be the continuing or surviving Person or (y) so long as no Default or Event of Default exists or would result therefrom, the Borrower may merge or consolidate with any other Person; provided that if the Person formed by or surviving any such merger or consolidation is not the Borrower (any such Person, the "Successor Company"), (A) the Successor Company shall be an entity organized or existing under the laws of the United States of America, any State thereof or the District of Columbia, (B) the Successor Company shall expressly assume all the obligations of the Borrower under this Agreement and the other Loan Documents to which the Borrower is a party pursuant to a supplement hereto or thereto reasonably satisfactory to the Administrative Agent and the Collateral Agent, (C) each Subsidiary Guarantor, unless it is the Successor Company, shall have confirmed that its Subsidiary Guaranty shall apply to the Successor Company's obligations under the Loan Documents, (D) each Subsidiary Guarantor, unless it is the Successor Company, shall have, by a supplement to the Pledge and Security Agreement and other applicable Security Documents, confirmed that its obligations thereunder shall apply to its guarantee of the Successor Company's obligations under the Loan Documents, (E) the Equity Pledgor shall have confirmed that the Equity Pledge Agreement shall apply to the Successor Company's obligations under the Loan Documents, (F) the Equity Pledgor shall have, by a supplement to the Equity Pledge Agreement and other applicable Security Documents, confirmed that its obligations thereunder shall apply to its guarantee of the Successor Company's obligations under the Loan Documents, (G) the Completion Guarantor shall have confirmed that its Completion Guaranty shall apply to the Successor Company's obligations under the Loan Documents, (H) the Completion Guarantor shall have, by a supplement to the

Completion Guaranty and other applicable Security Documents, confirmed that its obligations thereunder shall apply to its guarantee of the Successor Company's obligations under the Loan Documents, and (I) the Borrower shall have delivered to the Administrative Agent an officer's certificate and an opinion of counsel as to the enforceability of this Agreement, the Pledge and Security Agreement, the Subsidiary Guaranty, the Equity Pledge Agreement, the Completion Guaranty and the other Security Documents as so supplemented and the perfection of the Liens under the Security Documents; provided, further, that if the foregoing conditions are satisfied, the Successor Company will succeed to, and be substituted for, the Borrower under this Agreement and the other Loan Documents;

(b) conveyances, sales, leases, subleases, exchanges, transfers or other dispositions of assets that do not constitute Asset Sales;

(c) Asset Sales, the proceeds of which (valued at the principal amount thereof in the case of non-Cash proceeds consisting of notes or other debt Securities and valued at fair market value in the case of other non-Cash proceeds), when aggregated with the proceeds of all other Asset Sales made during the term of this Agreement, are less than $20,000,000; provided (1) the consideration received for such assets shall be in an amount at least equal to the fair market value thereof (determined in good faith by the applicable Loan Party), (2) no less than 75% thereof shall be paid in Cash and/or Cash Equivalents, (3) in no event shall any such Asset Sale involve any Real Property (except as permitted pursuant to clauses (f) and (g) below) or materially and adversely affect the Loan Parties' ability (x) if prior to the Completion Date, to develop, construct and operate the Project in accordance in all material respects with the Plans and Specifications and the Loan Documents and (y) if on or after the Casino Opening Date, to operate the Project as contemplated by the Loan Documents and (4) the Net Cash Proceeds thereof shall be applied as required by Section 2.13(a);

(d) the sale of past-due receivables for purposes of collection;

(e) conveyances, sales, leases, subleases, exchanges, transfers or other dispositions of equipment valued at not more than $500,000 in the aggregate in any Fiscal Year to employees of the Loan Parties in the ordinary course of business;

(f) the IDA Lease Agreement and other space leases or subleases of portions of the Real Property owned or leased by the Loan Parties, entered into by the applicable Loan Party in accordance with the provisions of Section 6.03(b); and

(g) the dedication of Real Property or other sales, assignments or dispositions of Real Property (including pursuant to a lease or sublease and/or pursuant to amendment to the Ground Lease, the Entertainment Village Lease or the Golf Course Lease to reduce the Real Property subject thereto) not to exceed 30 acres of Real Property in the aggregate, so long as such dedications, sales, assignments and/or dispositions do not materially impair or interfere with, the operations (or intended use or operations) of the Project or the business operations of any Loan Party, do not relate to Real Property upon which the principal improvements related to the Project are located and no gaming or casino operations (other than the operation of arcades and games for minors) may be conducted on any Real Property that is subject to such dedications, sales, assignments and/or dispositions; provided that in order to accomplish the foregoing the Loan Parties may record, or cause to be recorded, lot line adjustments and/or subdivide the Real Property so long as (i) in the case of any such subdivision, such real property is subdivided such that it will represent a separate municipal tax parcel independent of the remainder of the Real Property of the Loan Parties, (ii) such lot line adjustment or subdivision does not render the remainder of the Real Property (or any portion thereof), or the operations thereon, as non-conforming under applicable zoning and land use ordinances, and does not otherwise result in the violation in any material respect of any applicable variances, special exceptions, conditional use approvals, covenants, conditions, restrictions or any other Legal Requirements or approvals to which the remainder of the Real Property (or any portion thereof) or the operations thereon or the Loan Parties are subject and (iii) the Loan Parties have received all necessary governmental approvals with respect to such lot line adjustment or subdivision, including from the Gaming Authorities; provided, further that with respect to any such dedications, sales, assignments and/or dispositions (A) the remaining Real Property and/or the Loan Parties have been given all easements and other rights-of-way across any Real Property so dedicated, sold, assigned or otherwise disposed of as necessary or, in the reasonable determination of the Borrower, desirable for the continued operations of the Project, including legal and physical access to public rights of way and with respect to utilities, ingress and egress and fire and safety access and (B) the Collateral Agent shall have received affirmative endorsements to the title insurance policies with respect to the remaining Real Property or such other evidence, in each case in form and substance reasonably satisfactory to the Administrative Agent, confirming that the Lien of the Mortgages and coverage of the title insurance policies with respect to the remaining Real Property have not been impaired by such dedication, sale, assignment or other disposition and/or lot line adjustment or subdivision, as the case may be (and, to the extent an amendment, modification or other supplement to any Mortgage is required with respect thereto, including for purposes of amending legal descriptions attached to any Mortgage, the Administrative Agent shall direct (without the consent of the Lenders) the Collateral Agent to make such amendments, modifications or other supplements thereto (it being understood that any such amendments, modifications or other supplements must be in form and substance reasonably satisfactory to the Administrative Agent)).

Section 6.10. Disposal of Subsidiary Interests. Except for any sale of all of its interests in the Capital Stock of any of the Subsidiary Guarantors in compliance with the provisions of Section 6.09, the Borrower shall not, and it shall not permit any of the Subsidiary Guarantors to, directly or indirectly sell, assign, pledge or otherwise encumber or dispose of any Capital Stock in any of the

Subsidiary Guarantors, except (i) to the Borrower or another Subsidiary Guarantor and (ii) the granting of Liens to secure Indebtedness incurred pursuant to Sections 6.01(a) and (p).

Section 6.11. Sales and Lease-Backs. Other than resulting from the IDA Documents or the disposition of assets in connection with the incurrence of Capital Lease Obligations and purchase money Indebtedness permitted pursuant to Section 6.01(j) with respect to such assets, the Borrower shall not, and it shall not permit any other Loan Party to, directly or indirectly, become or remain liable as lessee or as a guarantor or other surety with respect to any lease of any property (whether real, personal or mixed), whether now owned or hereafter acquired, which such Loan Party (a) has sold or transferred or is to sell or to transfer to any other Person (other than the Borrower or any of the other Loan Parties), or (b) intends to use for substantially the same purpose as any other property which has been or is to be sold or transferred by such Loan Party to any Person (other than the Borrower or any of the other Loan Parties) in connection with such lease.

Section 6.12. Transactions with Shareholders and Affiliates. The Borrower shall not, and it shall not permit any other Loan Party to, directly or indirectly, enter into any transaction (including the purchase, sale, lease or exchange of any property or the rendering of any service, but excluding the Transactions) with, or for the benefit of, any of its Affiliates or to permit any such transaction to exist, unless such transaction is:

(a) on terms that are not less favorable to the Borrower or such other Loan Party than those that might be obtained at the time in a comparable arm's length transaction with Persons who are not Affiliates of the Borrower or such other Loan Party and the Borrower shall have delivered to the Administrative Agent prior to the consummation of any such transaction or series of related transactions that involves aggregate consideration in excess of $5,000,000 a resolution of the Board of Managers of the Borrower as to the fairness to each applicable Loan Party at the time such transaction or series of related transactions is entered into from a financial point of view; provided that in no event shall any transaction entered into pursuant to this clause (a) consist of, contain, or provide for the payment of any management, consulting, advisory or similar fee, benefiting any Affiliate of a Loan Party (other than a Loan Party);

(b) between the Loan Parties;

(c) reasonable and customary fees paid to, and reasonable and customary expenses, reimbursements and indemnification agreements with, members of the board of directors, managing member(s), general partner, manager or similar governing body of the Loan Parties;

(d) associated with employment agreements, compensation agreements, non-competition and confidentiality arrangements, employee benefit plans, equity or equity-based or other incentive plans, indemnification provisions and other similar compensatory arrangements with officers, employees and directors of the Loan Parties in the ordinary course of business or as approved by a majority of the independent members of the Board of Managers of the Borrower;

(e) the making of Restricted Junior Payments permitted by Section 6.05;

(f) the making of payments by the Borrower to Affiliates as reimbursements in the ordinary course of business (without any such payments intended in good faith to provide any fee, profit or similar component benefiting any Affiliate of a Loan Party) for:

(i) payments made by such Affiliates to Persons that are not Affiliates of the Borrower for products and/or services (including advertising, marketing and insurance products and services) purchased by such Affiliates for utilization or application for the benefit of the gaming, lodging and leisure properties directly or indirectly owned by such Affiliates, such reimbursement to not exceed the pro rata amount of such payments allocated in good faith to the Project after taking into consideration the direct benefits obtained by the Project therefrom as compared to the benefits obtained therefrom by the other gaming, lodging and leisure properties directly or indirectly owned by such Affiliates; and

(ii) to the extent the Loan Parties utilize services of employees of such Affiliates in lieu of such services being provided by employees of the Loan Parties, whether pursuant to an employee sharing arrangement or other similar program, the salary and benefits of such employees and other office/clerical overhead incurred by such Affiliates with respect to such employees (provided such reimbursement is only for such portion of such employees' salary and benefits and related office/clerical overhead as are allocated in good faith to the Loan Parties and the Project) and reasonable travel (including airline travel (provided that any travel expenses pertaining to the expenses of private/chartered aircraft for any given journey shall be reimbursable only in an amount not to exceed the cost of a first-class ticket that could have been purchased on a commercial airline for the same journey on the applicable date)), lodging, food and entertainment expenses of such employees incurred in furtherance of services provided for, or on behalf of, the Project;

(g) related to the provision or purchase of gaming equipment on terms that are not less favorable to the Borrower or such other Loan Party than those that might be obtained at the time in a comparable arm's length transaction with Persons who are not

Affiliates of the Borrower or such other Loan Party;

(h) the lease of space on an arm's length basis solely for the operation of a venue within the Project to an Unrestricted Subsidiary or a Joint Venture formed pursuant to Section 6.15;

(i) with an Affiliated Lender acquiring Loans in accordance with Section 9.04(g) in its capacity as a Lender under the Loan Documents;

(j) pursuant to the terms and conditions of the Development Documents or Subordinated Indebtedness (provided, that any amendments to the foregoing shall be required to comply with clause (a) above and the other applicable provisions of the Loan Documents);

(k) purchases of materials or services by the Loan Parties in the ordinary course of business pursuant to a shared services agreement or procurement agreement on arm's length terms;

(l) any agreement by an Unrestricted Subsidiary or Joint Venture to pay management fees to the Loan Party directly or indirectly;

(m) Investments permitted by Section 6.07;

(n) set forth on Schedule 6.12 (provided that any amendments to the foregoing shall be required to comply with clause (a) above and the other applicable provisions of the Loan Documents);

(o) contemplated by any Project Document, the Purchase Option Agreement or the Equity Pledge Agreement (provided that any amendments to the foregoing shall be required to comply with clause (a) above and the other applicable provisions of the Loan Documents);

(p) pursuant to joint marketing, cross marketing, procurement, branding and licensing agreements on arm's length terms as approved by the Board of Managers of the Borrower;

(q) the payment of licensing fees to any Affiliate of the Borrower in connection with the licensing of trade names and trademarks pursuant to a license agreement on arm's length terms as approved by the Board of Managers of the Borrower;

(r) the sale, assignment or disposition of Real Property pursuant to Section 6.09(g); or

(s) a branding or licensing agreement (and related and ancillary agreements), entered into from or after the Closing Date, with a Permitted Holder or an Affiliate thereof for use of the name "Resorts World" approved by the Board of Managers of the Borrower, provided, that the aggregate fees payable thereunder shall not exceed for any year of such agreement the correlative amounts set forth in item 7 of Schedule 6.12.

Section 6.13. Conduct of Business.

(a) The Borrower shall not, and it shall not permit any other Loan Party to, engage in any business other than any business or activities engaged in on the Closing Date and any activity or business incidental, related or similar thereto, or any business or activity that is a reasonable extension, development or expansion thereof or ancillary thereto, including the development, construction and operation of the Project and ancillary venues and amenities associated with the Project or related thereto (including venues and amenities to be provided to or for the benefit of patrons of the Project located at or near the Project), and any other business or activity designed to promote, market, support, develop, construct or enhance the gaming, hotel, retail, entertainment and resort business operated or intended to be operated by the Loan Parties, and performing its obligations under the Loan Documents and the Revolving Facility Documents and any other transaction entered into by such Loan Party in compliance with the terms of the Loan Documents, and performing activities incidental to any of the foregoing businesses and activities.

(b) The Borrower shall not permit any Unrestricted Subsidiary to (i) operate or conduct any gaming or gaming related activities, (ii) pay or make any Restricted Junior Payment to, or make any Investment in, any Affiliate of the Borrower (other than a Loan Party or through a Loan Party to the extent permitted hereunder) or (iii) (other than on an arm's length basis and as otherwise permitted by this Agreement) enter into any other transaction with any Affiliate of the Borrower (other than a Loan Party to the extent otherwise permitted by this Agreement).

Section 6.14. Amendments or Waivers. The Borrower shall not, and it shall not permit any other Loan Party to:

(a) permit any waiver, supplement, modification, amendment, termination or release of, or fail to enforce the terms and

conditions of, any of the Material Contracts or any Permits, except to the extent that (x) such waiver, supplement, modification, amendment, termination or release or failure to enforce any Material Contract (including any IDA Document) or Permit could not reasonably be expected to have a Material Adverse Effect or (y) in the case of the IDA Documents, such waiver, supplement, modification, amendment, termination or release or failure to enforce could not reasonably be expected to materially impair or be materially adverse to the rights or remedies of the Administrative Agent or the Secured Parties with respect to its security interests therein;

(b) amend, modify, supplement or waive, or permit or consent to the amendment, modification, supplement or waiver of, any lease or ground lease under which a Loan Party is the tenant or subtenant and that is material to the Project (including the IDA Leaseback, the Ground Lease, the Entertainment Village Lease and the Golf Course Lease) or any other material property of the Loan Parties if such amendment, modification, supplement or waiver could reasonably be expected to have a Material Adverse Effect or materially impair the rights of the Administrative Agent or the Secured Parties with respect thereto;

(c) amend or modify, or permit the amendment or modification of, its Governing Documents in any manner materially adverse to the Lenders, or as could otherwise reasonably be expected to have a Material Adverse Effect; or

(d) amend, modify, supplement or waive, or permit or consent to the amendment, modification, supplement or waiver of any Gaming License or the Gaming License Conditions if such amendment, modification, supplement or waiver could reasonably be expected to have a Material Adverse Effect or materially impair the rights of the Collateral Agent or the Lenders with respect thereto or create obligations thereunder that conflict with the terms and conditions of the Loan Documents and may jeopardize the Loan Parties' ability to comply with both the terms and conditions of the Gaming License and/or the Gaming License Conditions, on the one hand, and the Loan Documents, on the other hand.

Section 6.15. Limitation on Formation and Acquisition of Subsidiaries and Purchase of Capital Stock.

(a) The Borrower shall not, and shall not permit any of the other Loan Parties to, form, create or acquire any direct or indirect Subsidiary or Unrestricted Subsidiary. Notwithstanding the foregoing, so long as no Default or Event of Default shall have occurred and be continuing or would result therefrom, the Borrower and the other Loan Parties may form, create or acquire (I) new Subsidiaries and (II) Unrestricted Subsidiaries to the extent not in violation of Section 6.07 or Section 6.13; provided, that (i) any such new Subsidiary shall be a direct or indirect wholly owned Subsidiary of the Borrower organized under the laws of the United States or any state thereof, (ii) any such new Subsidiary shall promptly become a Subsidiary Guarantor and otherwise comply with the requirements of Section 5.11, (iii) any such new Subsidiary shall immediately be deemed a "Loan Party" for purposes of this Agreement and the other Loan Documents, (iv) in the case of preceding clause (II), at least five (5) Business Days' prior written notice thereof is given to the Administrative Agent (or such shorter period of time as is acceptable to the Administrative Agent) and (v) the Capital Stock in such new Subsidiary or Unrestricted Subsidiary, to the extent owned by a Loan Party or a Person that is required to become a Loan Party, is pledged pursuant to (and to the extent required by) the applicable Security Document, and the certificates representing such stock, if any, together with stock powers duly executed in blank, are delivered to the Administrative Agent. Notwithstanding anything to the contrary contained in this Agreement, no Loan Party shall (A) own any Capital Stock other than that in Unrestricted Subsidiaries (to the extent otherwise permitted hereunder) and its Subsidiaries or Investments permitted pursuant to Section 6.07 (including in Unrestricted Subsidiaries) or (B) other than as permitted by clause (b) below, own any interest in a Joint Venture.

(b) Notwithstanding anything to the contrary in clause (a) above, the Loan Parties may enter into and maintain ownership interests in Joint Ventures to provide food and beverage, golf course services or other amenities to be provided to or for the benefit of patrons of the Project at venues at or near the Project; provided, however, (i) in no case will any Joint Venture formed pursuant to this clause (b) conduct gaming or gaming related activities and (ii) all Investments in any such Joint Venture by a Loan Party are permitted by Section 6.07.

Section 6.16. Fiscal Year. The Borrower shall not, and shall not permit any other Loan Party to, change its Fiscal Year-end from December 31.

Section 6.17. Limitation on Hedging Agreements. The Borrower shall not, and shall not permit any other Loan Party to, enter into any Hedging Agreement other than any such agreement required hereunder or otherwise entered into to hedge against fluctuations in (i) interest rates or currency, and (ii) electricity and natural gas prices; provided that, in each case, such agreements or arrangements shall not have been entered into for speculation purposes and shall have been incurred in the ordinary course of business.

Section 6.18. Permitted Activities of the Equity Pledgor. The Borrower shall cause the Equity Pledgor not to (i) sell or otherwise dispose of any Capital Stock in the Borrower; or (ii) fail to hold itself out to the public as a legal entity separate and distinct from the Loan Parties. Notwithstanding the foregoing, this Section 6.18 shall not be deemed to restrict an Equity Pledgor Transaction.

ARTICLE VII.

EVENTS OF DEFAULT

Section 7.01. Events of Default. In case of the happening of any of the following events ("Events of Default"):

(a) any representation or warranty made or deemed made by a Company in any Loan Document, or any representation, warranty, statement or certificate given by a Company in writing in connection with or pursuant to any Loan Document, shall prove to have been false or misleading in any material respect when so made, deemed made or furnished by or on behalf of a Loan Party; provided that, if a representation and warranty contains a materiality or Material Adverse Effect qualification, the materiality qualifier in this Section 7.01(a) shall be disregarded for purposes of such representation and warranty; provided, further, that the inaccuracy of any representation or warranty contained only in a Disbursement Agreement shall constitute an Event of Default hereunder only to the extent such inaccuracy constitutes a Disbursement Agreement Event of Default;

(b) default shall be made by a Loan Party in the payment of any principal of any Loan when and as the same shall become due and payable, whether at the due date thereof or at a date fixed for prepayment thereof (whether voluntary or mandatory) or by acceleration thereof or otherwise;

(c) default shall be made by a Company or the Completion Guarantor in the payment of any interest on any Loan or any Fee or any other amount (other than an amount referred to in clause (b) above) due under any Loan Document, when and as the same shall become due and payable, and such default shall continue unremedied for a period of five (5) days; provided that the failure to pay any amount due under a Disbursement Agreement (and not otherwise due hereunder) shall constitute an Event of Default hereunder only to the extent such failure to pay constitutes a Disbursement Agreement Event of Default;

(d) default shall be made in the due observance or performance by (x) the Borrower or any other Loan Party of any covenant, condition or agreement contained in Section 5.01(f), Section 5.02, Section 5.05 (to the extent it applies to acquisition or maintenance of insurance), Section 5.07, Section 5.13, Section 5.15, Section 5.17 or Section 5.18 or in Article VI (subject, in the case of Section 6.08 to the cure rights set forth in Section 7.03) or (y) the Completion Guarantor of the covenant contained in Section 2.1 or Section 2.6 of the Completion Guaranty;

(e) any Disbursement Agreement Event of Default shall have occurred and be continuing;

(f) default shall be made in the due observance or performance by any Company of any covenant, condition or agreement contained in any Loan Document (other than those specified in clauses (b), (c), (d) or (e) above) and such default shall continue unremedied for a period of thirty (30) days after the earlier of (i) any officer of a Company becoming aware of such default or (ii) receipt by any Company of written notice from the Administrative Agent or any Lender of such default; provided that the failure to observe or perform any such provision of a Disbursement Agreement shall constitute an Event of Default hereunder only to the extent such failure to observe or perform constitutes a Disbursement Agreement Event of Default;

(g) with respect to any Material Indebtedness, (i) any Loan Party shall fail to pay any principal or interest, regardless of amount, due in respect of such Indebtedness, when and as the same shall become due and payable (after the expiration of any related grace or cure periods provided thereunder), or (ii) any other breach or default by any Loan Party occurs with respect to any other term of Material Indebtedness that results in such Indebtedness becoming due prior to its scheduled maturity or that enables or permits (with or without the giving of notice) the holder or holders of such Indebtedness or any trustee or agent on its or their behalf to cause such Indebtedness to become due, or to require the prepayment, repurchase, redemption or defeasance thereof, prior to its scheduled maturity; provided that, upon the cure or waiver of such default (so long as prior to the acceleration of such Indebtedness), the Event of Default hereunder shall no longer exist;

(h) an involuntary proceeding shall be commenced or an involuntary petition shall be filed in a court of competent jurisdiction seeking (i) relief in respect of any Company, or of a substantial part of any Company, under any Debtor Relief Law, (ii) the appointment of a receiver, trustee, custodian, sequestrator, conservator or similar official for any Company or for a substantial part of the Property of any Company or (iii) the winding-up, dissolution, split-up or liquidation of any Company; and such proceeding or petition shall continue for sixty (60) days without having been dismissed, bonded, or discharged, or an order or decree approving or ordering any of the foregoing shall be entered;

(i) any Company shall (i) voluntarily commence any proceeding or file any petition seeking relief under any Debtor Relief Law, (ii) consent to the institution of, or fail to contest in a timely and appropriate manner, any proceeding or the filing of any petition described in clause (h) above, (iii) apply for or consent to the appointment of a receiver, trustee, custodian, sequestrator, conservator or similar official for any Company or for a substantial part of the Property of any Company, (iv) file an answer admitting the material allegations of a petition filed against it in any such proceeding, (v) make a general assignment for the benefit of creditors, (vi) become unable, admit in writing its inability or fail generally to pay its debts as they become due or (vii) take any action for the purpose of

effecting any of the foregoing;

(j) one or more judgments for the payment of money in an aggregate amount in excess of $10,000,000 for all the Loan Parties and the Equity Pledgor (to the extent not paid or adequately covered by insurance as to which the solvent and unaffiliated insurance companies have acknowledged coverage) or other judgments that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect shall be rendered against any Loan Party or the Equity Pledgor, or any combination thereof, and the same shall remain undischarged, unvacated or unbonded for a period of forty-five (45) consecutive days during which execution shall not be effectively stayed, or any action shall be legally taken by a judgment creditor to levy upon assets or properties of any Company to enforce any such judgment;

(k) an ERISA Event shall have occurred that, when taken together with all other such ERISA Events, could reasonably be expected to result in liability of any Loan Party that could reasonably be expected to result in a Material Adverse Effect;

(l) (i) any Guarantee under the Subsidiary Guaranty, the Equity Pledge Agreement or the Completion Guaranty for any reason shall cease to be in full force and effect (other than pursuant to its terms) or shall be deemed null and void, (ii) any of the Borrower, the Subsidiary Guarantors or the Completion Guarantor shall deny in writing that it has any further liability under the Subsidiary Guaranty or the Completion Guaranty, as the case may be, or (iii) the Equity Pledgor shall deny in writing that it has any further liability under the Equity Pledge Agreement (in each case other than as a result of the discharge of such Subsidiary Guarantor, the Equity Pledgor or the Completion Guarantor in accordance with the terms of the Loan Documents);

(m) any of the Loan Documents shall cease, for any reason (other than pursuant to the terms thereof), to be in full force and effect or shall be deemed null and void, or any Company party thereto shall so assert in writing or shall assert in writing that any provision of any Loan Document is not in full force and effect (other than pursuant to its terms) or shall otherwise contest the validity or enforceability of any Loan Document in writing;

(n) any Lien purported to be created under any Security Document and extended to assets with a value in the aggregate in excess of $2,000,000 shall cease to be, or shall be asserted in writing by any Company party thereto not to be, a valid and perfected, with the priority required by the Loan Documents (except, in each case, as otherwise provided in this Agreement or such Security Document), Lien on any Collateral covered thereby (or any such Lien shall be deemed to be null and void) other than (x) as a result of the sale or other disposition of the Collateral in a transaction permitted under the Loan Documents to a Person that is not a Loan Party or (y) as a result of the Collateral Agent's failure to maintain possession of any equity certificates or other instruments delivered to it under the Loan Documents;

(o) there shall have occurred a Change in Control;

(p) a License Revocation shall have occurred and continue for seven (7) consecutive Business Days;

(q) there shall have occurred the termination of, or the receipt by any Loan Party of notice of the termination of, or the occurrence of any event or condition which constitutes an event of default by a Loan Party (which has not been cured following any applicable grace period (after giving effect to any standstill or any extension with respect thereto) provided to a Loan Party thereunder) under or permit the termination of the Ground Lease, the Entertainment Village Lease or the Golf Course Lease; or

(r) there shall have occurred an "Event of Default" under (and as defined in) the Revolving Credit Agreement; provided that, upon the cure or waiver of such default (so long as prior to the acceleration of such Indebtedness), the Event of Default under this clause (r) shall no longer exist.

then, and in every such event (other than an event described in clause (h) or (i) above, in which case such actions shall occur automatically as further set forth below), and at any time thereafter during the continuance of such event either or both of the following actions may be taken: (i) the Administrative Agent may, and at the request of the Required Lenders shall, by notice to the Borrower, terminate forthwith the Commitments and (ii) the Administrative Agent may, and at the request of the Required Lenders shall, declare the Loans then outstanding to be forthwith due and payable in whole or in part, whereupon the principal of the Loans so declared to be due and payable, together with accrued interest thereon, together with any fees or repayment premiums applicable under Section 2.12(c), and any unpaid accrued Fees and all other liabilities of the Loan Parties accrued hereunder and under any other Loan Document, shall become forthwith due and payable, without presentment, demand, protest or any other notice of any kind, all of which are hereby expressly waived by the Borrower, anything contained herein or in any other Loan Document to the contrary notwithstanding; and the Administrative Agent shall have the right (directly or through the Collateral Agent) to take all or any actions and exercise any remedies available to a secured party under the Security Documents (subject to the terms of the Intercreditor Agreement), the other Loan Documents or applicable law or in equity; and in any event described in clause (h) or (i) above, all of the Commitments shall automatically terminate and the principal of the Loans then outstanding, together with accrued interest thereon, together with any fees or repayment premiums applicable under Section 2.12(c), and any unpaid accrued Fees and all other liabilities of

the Loan Parties accrued hereunder and under any other Loan Document, shall automatically become due and payable, without presentment, demand, protest or any other notice of any kind, all of which are hereby expressly waived by the Borrower, anything contained herein or in any other Loan Document to the contrary notwithstanding; and the Administrative Agent shall have the right (directly or through the Collateral Agent) to take all or any actions and exercise any remedies available to a secured party under the Security Documents or applicable law or in equity.

Section 7.02. Application of Proceeds. Except as expressly provided elsewhere in the Loan Documents and subject to the provisions of the Intercreditor Agreement, after the exercise of remedies provided for under this Agreement or the other Loan Documents (or after the Loans have become immediately due and payable (whether due to acceleration or otherwise)) any amounts received on account of the Obligations (including all proceeds received by the Administrative Agent in respect of any sale, any collection from, or other realization upon all or any part of the Collateral but excluding the payment of current interest or interest paid as a form of adequate protection in any insolvency or liquidation proceeding) shall be applied in full or in part by the Administrative Agent against the Obligations in the following order of priority:

First, to the payment of that portion of the Obligations constituting Fees, indemnities (other than unasserted contingent indemnification obligations), expenses and other amounts (including fees, charges and disbursements of counsel to the Agents) payable to the Agents in their capacities as such (including all costs and expenses of any sale, collection or other realization upon Collateral or any expenditures in connection with the preservation of Collateral), together with interest on each such amount from and after the date such amount is due, owing or unpaid until paid in full;

Second, to the payment of that portion of the Obligations constituting Fees and indemnities (other than unasserted contingent indemnification obligations) and other amounts, (other than principal and interest) payable to the Lenders, ratably among them in proportion to the respective amounts described in this clause payable to them together with interest on each such amount from and after the date such amount is due, owing or unpaid until paid in full;

Third, to the payment of that portion of the Obligations (including, for the avoidance of doubt, interest which, but for the filing of a petition in bankruptcy with respect to any Company would have accrued on any such Obligation, whether or not a claim is allowed or allowable against any Company for such interest in the related bankruptcy proceeding) constituting accrued and unpaid interest on the Loans and other Obligations under the Loan Documents and the Specified Hedging Agreements and scheduled periodic payments under the Specified Hedging Agreements, ratably among the Lenders and the Specified Hedging Counterparties in proportion to the respective amounts described in this clause payable to them;

Fourth, to the payment of that portion of the Obligations constituting unpaid principal of the Loans or breakage, termination or other payments under Specified Hedging Agreements and Specified Cash Management Agreements, ratably among the Lenders and the Specified Hedging Agreement Counterparties, and Specified Cash Management Counterparties in proportion to the respective amounts described in this clause held by them;

Fifth, to the payment of all other Obligations owing under or in respect of the Loan Documents, the Specified Hedging Agreements and the Specified Cash Management Agreements that are due and payable to the Administrative Agent and the other Secured Parties on such date, ratably based upon the respective aggregate amounts of all such Obligations owing to the Administrative Agent and the other Secured Parties on such date; and

Last, the balance, if any, after all of the Obligations have been indefeasibly paid in full, to the Borrower or as otherwise required by Requirements of Law.

For the avoidance of doubt, notwithstanding any other provision of any Loan Document to the contrary, no payment received from the Equity Pledgor or Subsidiary Guarantor that is not a Qualified ECP Guarantor shall be applied by the Administrative Agent or any other Secured Party to the payment of any Excluded Swap Obligations.

Section 7.03. Right to Cure. Notwithstanding anything to the contrary contained in Section 7.01, for purposes of determining whether an Event of Default has occurred under any financial covenant set forth in Section 6.08(a) or Section 6.08(b), any proceeds of cash equity contributions (in the form of common equity or other equity having terms reasonably acceptable to the Administrative Agent) or cash proceeds of Subordinated Indebtedness received by the Borrower from the Sponsor, in each case, after the last day of any Fiscal Quarter and on or prior to the day that is ten (10) days after the day on which financial statements are required to be delivered for that Fiscal Quarter (such date being hereinafter referred to as the "Subject Date") will, at the written request of the Borrower (such request to be made at the time of the Borrower's receipt of such proceeds), be included in the calculation of Consolidated Adjusted EBITDA solely for the purposes of determining compliance with the financial covenants at the end of such Fiscal Quarter and any subsequent period that includes such Fiscal Quarter (any such equity contribution or Subordinated Indebtedness, a "Specified Equity Contribution"); provided that (a) the Borrower shall not be permitted to so request that a Specified Equity Contribution be included in the calculation of Consolidated Adjusted EBITDA with respect to any Fiscal Quarter unless, after giving effect to such requested Specified Equity Contribution, there will be a period of at least two Fiscal Quarters in the Relevant Four

Fiscal Quarter Period in which no Specified Equity Contribution has been made (it being understood that this clause (a) shall not apply until the fourth full Fiscal Quarter tested pursuant to the financial covenants set forth in Section 6.08), (b) no more than five (5) Specified Equity Contributions will be made in the aggregate prior to the latest Scheduled Maturity Date, (c) the amount of any Specified Equity Contribution in any Fiscal Quarter shall not exceed the amount required to cause the Borrower to be in compliance with the financial covenants, (d) all Specified Equity Contributions and the use of proceeds therefrom will be disregarded for all other purposes under the Loan Documents (including calculating Consolidated Adjusted EBITDA for purposes of determining basket levels or carve-outs and other items governed by reference to Consolidated Adjusted EBITDA, and for purposes of Restricted Junior Payment allowances) and (e) to the extent that the proceeds of any Specified Equity Contribution are used to repay Indebtedness, such Indebtedness shall not be deemed to have been repaid for purposes of calculating the Interest Coverage Ratio or the First Lien Leverage Ratio for the applicable Relevant Four Fiscal Quarter Period. For purposes of this paragraph, the term "Relevant Four Fiscal Quarter Period" shall mean, with respect to any requested Specified Equity Contribution, the four Fiscal Quarter period ending on (and including) the Fiscal Quarter in which Consolidated Adjusted EBITDA will be increased as a result of such Specified Equity Contribution. Notwithstanding anything herein to the contrary, (i) with respect to any Event of Default arising solely under Section 6.08(a) or Section 6.08(b), prior to the Subject Date associated therewith, none of Administrative Agent, Collateral Agent nor any Lender shall exercise any rights or remedies pursuant to Article VII or any other provision of any Loan Document or applicable law solely on the basis of such Event of Default having occurred and being continuing; provided that, for purposes of clarification, the foregoing shall not be deemed to permit the Borrower or any other Loan Party to request Loans or take any other actions during the pendency of any Event of Default arising Section 6.08(a) or Section 6.08(b) that would otherwise be prohibited by the Loan Documents while any Default or Event of Default has occurred and is then continuing, and (ii) if, after giving effect to the foregoing recalculations, the requirements of Section 6.08(a) or Section 6.08(b) shall be satisfied, then the requirements of Section 6.08(a) or Section 6.08(b) shall be deemed satisfied as of the end of the relevant Fiscal Quarter with the same effect as though there had been no failure to comply therewith at such date, and the applicable breach of Section 6.08(a) and/or Section 6.08(b) that had occurred (and any resultant Default or Event of Default) shall be deemed retroactively not to have occurred for the purposes of this Agreement (including for purposes of Section 4.02).

ARTICLE VIII.

AGENTS AND ARRANGER

Section 8.01. Appointment of Agents. Each of the Lenders hereby irrevocably appoints (a) Credit Suisse AG, Cayman Islands Branch, as the Administrative Agent, (b) Credit Suisse Securities (USA) LLC, as Lead Arranger, (c) Fifth Third Bank, as Lead Arranger, (d) Nomura Securities International, Inc., as Lead Arranger, and (e) Credit Suisse AG, Cayman Island Branch, as Collateral Agent. Each Agent hereby agrees to act upon the express conditions contained herein and the other Loan Documents, as applicable. The provisions of this Article VIII (other than Section 8.09(a), which shall also be for the benefit of the Borrower) are solely for the benefit of the Agents and the Lenders and no Company shall have any rights as a third party beneficiary of any of the provisions thereof. In performing its functions and duties hereunder, each Agent shall act solely as a representative and on behalf of the Lenders and the other Secured Parties and does not assume and shall not be deemed to have assumed any obligation towards or relationship of agency or trust with or for any Company. It is understood and agreed that the use of the term "agent" herein or in any other Loan Documents (or any other similar term) with reference to an Agent is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any applicable law. Instead such term is used as a matter of market custom, and is intended to create or reflect only an administrative relationship between contracting parties. Each of the Agents, without consent of or notice to any party hereto, may assign any or all of its rights hereunder to any of its Affiliates.

Section 8.02. Powers and Duties. Each Lender irrevocably authorizes each Agent to take such action on such Lender's behalf and to exercise such powers, rights and remedies hereunder and under the other Loan Documents as are specifically delegated or granted to such Agent by the terms hereof and thereof, together with such powers, rights and remedies as are reasonably incidental thereto, including taking any action as a contractual representative of the Lenders. Each Agent shall have only those duties and responsibilities that are expressly specified herein and the other Loan Documents. Each Agent may exercise such powers, rights and remedies and perform such duties and responsibilities by or through any one or more co-agents, sub-agents or attorneys-in-fact appointed by it. Each Agent and any such co-agent or sub-agent may perform any or all its duties and responsibilities and exercise its rights, powers and remedies by or through their respective Related Parties. Any such co-agent, sub-agent or attorney-in-fact shall be entitled to the benefits of all provisions of this Article VIII and Article IX as though such co-agents, sub-agents or attorneys-in-fact were an Agent. The exculpatory provisions of this Article VIII shall apply to any such co-agent, sub-agent or attorney-in-fact and to the Related Parties of each Agent and any such co-agent, sub-agent or attorney-in-fact, and shall apply to their respective activities in connection with the syndication of the Facility provided for herein as well as their respective activities as an Agent. No Agent shall be responsible for the negligence or misconduct of any co-agents, sub-agents or attorneys-in-fact appointed by it except to the extent that a court of competent jurisdiction determines in a final and non-appealable judgment that such Agent acted with gross negligence or willful misconduct in the selection of such co-agent, sub-agent or attorney-in-fact. No Agent shall have, by reason hereof or any of the other Loan Documents, a fiduciary or trustee relationship with, or any other implied duties in respect of, any other Secured Party; and nothing herein or any of the other Loan Documents, expressed or implied, is intended to or shall be so construed as to impose upon

any Agent any duties or obligations in respect hereof or any of the other Loan Documents except as expressly set forth herein or therein, and its duties and obligations hereunder shall be administrative in nature. The Administrative Agent and the Collateral Agent are further authorized by the Lenders to enter into amendments and agreements supplemental to this Agreement or any other Loan Document for the purpose of curing any defect, inconsistency, omission or ambiguity in this Agreement or any other Loan Document to which the Administrative Agent or the Collateral Agent is a party or to effect administrative changes that are not adverse to any Lender (in each case without any consent or approval by the Lenders).

Section 8.03. General Immunity.

(a) No Responsibility for Certain Matters. None of the Agents or the Lead Arranger shall be responsible to any other Agent or Lead Arranger or any Lender, or be required to ascertain or inquire as to, (i) any statement, recital, warranty or representation (in each case whether written or oral) made in or in connection with any Loan Document, (ii) the contents of any certificate, report or other document (including financial statements) delivered thereunder or in connection therewith, (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth in any Loan Document, (iv) the execution, validity, enforceability, effectiveness, genuineness, sufficiency or collectability of any Loan Document or any other agreement, instrument or document, or the creation, perfection or priority of any Lien purported to be created by the Security Documents, (v) the value or sufficiency of any Collateral, (vi) the use of proceeds of the Loans, (vii) the existence or possible existence of any Default or Event of Default, (viii) the financial condition or business affairs of any Company or any other Person liable for the payment of any Obligations or (ix) the satisfaction of any condition set forth in Article IV or elsewhere in any Loan Document, other than to confirm receipt of items expressly required to be delivered to such Agent or Lead Arranger, or, in each such case, to make any disclosures with respect to the foregoing to the extent expressly required by the terms of the Loan Documents. Except as expressly set forth in the Loan Documents, none of the Agents or the Lead Arranger shall have any duty to disclose, nor shall it be liable for the failure to disclose, any information relating to any Sponsor, any Company or any Unrestricted Subsidiary that is communicated to or obtained by it or any of its Affiliates in any capacity. Anything contained herein to the contrary notwithstanding, the Administrative Agent shall not have any liability arising from confirmations of the amount of outstanding Loans or the component amounts thereof.

(b) Exculpatory Provisions. None of the Agents, the Lead Arranger or any of their respective Related Parties shall be liable to the other Agents, Lead Arranger, any Lender or any other Person for any action taken or not taken by it (i) with the consent or at the request of the Required Lenders (or such other number or percentage of the Lenders as shall be necessary, or as such Agent, Lead Arranger, or Related Party shall believe in good faith shall be necessary, under the circumstances as provided in Sections 9.08 and 7.01) or (ii) unless taking or not taking such action constituted gross negligence or willful misconduct, as determined by a court of competent jurisdiction by a final and nonappealable judgment. Each Agent shall be entitled to refrain from any act or the taking of any action (including the failure to take an action) in connection herewith or any of the other Loan Documents or from the exercise of any right, power, discretion or authority vested in it hereunder or thereunder unless and until such Agent shall have received written instructions in respect thereof from the Required Lenders (or such other number or percentage of Lenders as expressly provided for herein or in the other Loan Documents) and, upon receipt of such instructions from the Required Lenders (or such other Lenders, as the case may be), such Agent shall be entitled to act or (where so instructed) refrain from acting, or to exercise such power, discretion or authority, in accordance with such instructions; provided that no Agent shall be required to take any action that, in its opinion or the opinion of its counsel, may expose such Agent to liability or that is contrary to any Loan Document or applicable law, including for the avoidance of doubt, any action that may be in violation of the automatic stay under any Debtor Relief Law or that may affect a forfeiture, modification or termination of property of a Defaulting Lender in violation of any Debtor Relief Law. Without prejudice to the generality of the foregoing, (i) each of the Agents and the Lead Arranger shall be entitled to rely, and shall be fully protected, and shall not incur any liability, in relying, upon any notice, request, certificate, consent, communication, instrument, document or other writing (including any electronic message, Internet or intranet website posting or other distribution) believed by it to be genuine and to have been signed, sent or otherwise authenticated by the proper Person or Persons, and shall be entitled to rely and shall be fully protected, and shall not incur any liability, in relying on, and taking or not taking any actions in accordance with, opinions and judgments of attorneys (who may be attorneys for any of the Companies), accountants, experts and other professional advisors selected by it; and (ii) no Lender shall have any right of action whatsoever against any Agent as a result of such Agent acting or (where so instructed) refraining from acting hereunder or under any of the other Loan Documents in accordance with the instructions of the Required Lenders (or such other Lenders as may be expressly provided for herein or in the other Loan Documents). Each of the Agents and the Lead Arranger also may rely upon any statement made to it orally or by telephone and believed by it to have been made by the proper Person, and shall not incur any liability for relying thereon. In determining compliance with any condition hereunder to the making of a Loan or other Credit Extension, that by its terms must be fulfilled to the satisfaction of a Lender, each of the Agents and the Lead Arranger may presume that such condition is satisfactory to such Lender unless such Agent or Lead Arranger shall have received written notice to the contrary from such Lender prior to the making of such Loan.

Section 8.04. Notice of Default. None of the Agents or the Lead Arranger shall be deemed to have knowledge or notice of the occurrence of any Default or Event of Default hereunder unless such Agent or the Lead Arranger has received written notice from a Lender or the Borrower referring to this Agreement, describing such Default or Event of Default and stating that such notice is a "notice of default". In the event that the Administrative Agent receives such a notice, the Administrative Agent shall give notice thereof

to the Lenders. The Administrative Agent shall take such action with respect to such Default or Event of Default as shall be reasonably directed by the Required Lenders (or such other Lenders as may be required to give such direction pursuant to the terms of this Agreement); provided, that unless and until the Administrative Agent shall have received such directions, the Administrative Agent may (but shall not be obligated to) take such action, or refrain from taking such action, with respect to such Default or Event of Default as it shall deem advisable in the best interests of the Lenders.

Section 8.05. Agents and Arranger Entitled to Act as Lenders. Being an Agent or the Lead Arranger, or an Affiliate of an Agent or the Lead Arranger, shall in no way impair or affect any of the rights and powers of, or impose any duties or obligations upon, such Agent or the Lead Arranger or such Affiliate, in its individual capacity as a Lender hereunder. With respect to its participation in the Loans, each of the Agents and the Lead Arranger and the Affiliates of the Agents and the Lead Arranger shall have the same rights and powers hereunder as any other Lender and may exercise the same as if it were not performing the duties and functions delegated to it hereunder, and the term "Lender" shall, unless the context clearly otherwise indicates, include each of the Agents and the Lead Arranger, as the case may be, in its individual capacity. Any Agent or the Lead Arranger or any Affiliate of an Agent or the Lead Arranger may accept deposits from, lend money to, own securities of, and generally engage in any kind of banking, trust, financial advisory or other business with the Sponsors, the Companies or any of their respective Affiliates as if it (or its Affiliate) were not performing the duties specified herein, and may accept fees and other consideration from the Sponsors, the Companies or any of their respective Affiliates for services in connection herewith and otherwise without having to account for the same to the Lenders. In addition, the Lenders (i) understand and acknowledge that any Agent and/or its Affiliates have and may in the future enter into business relationships and transactions with the Sponsor and/or Sponsor's Affiliates (including as an investor in funds of the Sponsor and/or its Affiliates) and (ii) waive any conflict resulting therefrom and the result of any decisions made or actions taken or not taken by any Agent or its Affiliates that may in any manner be influenced by such business relationships or transactions.

Section 8.06. Lenders' Representations, Warranties and Acknowledgement.

(a) Each of the Lenders expressly acknowledges and agrees that none of the Agents, the Lead Arranger or any of their respective officers, directors, employees, agents, counsel, attorneys in fact or other affiliates has made any representations or warranties to such Lender and that no act by any of the Agents or the Lead Arranger hereafter taken, including any review of the affairs of any Sponsor, any Company or any of their respective Affiliates, shall be deemed to constitute a representation or warranty by such Agent or the Lead Arranger to any Lender. Each of the Lenders acknowledges that it has, independently and without reliance upon any Agent, the Lead Arranger, any other Lender or counsel to the Lead Arranger or any Agent, or any of their respective officers, directors, employees, agents, other Related Parties or counsel, and based on the financial statements of any Sponsor, any Company or any of their respective Affiliates, and inquiries of such Persons, its independent due diligence of the business and affairs of the Sponsors and the Companies and other Persons, its review of the Loan Documents, the legal opinions required to be delivered to it hereunder, the advice of its own counsel and such other documents and information as it has deemed appropriate, made its own credit and legal analysis and decision to enter into this Agreement and the transactions contemplated hereby. Each of the Lenders also acknowledges that it will, independently and without reliance upon any Agent, the Lead Arranger, any other Lender or counsel to the Lead Arranger, or any Agent or any of their respective officers, directors, employees, other Related Parties and agents, and based on such review, advice, documents and information as it shall deem appropriate at the time, continue to make its own decisions in taking or not taking action under the Loan Documents. None of the Agents or the Lead Arranger shall be required to keep itself informed as to the performance or observance by any Sponsor or any Company of the Loan Documents or any other document referred to or provided for therein or to inspect the properties or books of, or make any other investigation of, any Sponsor or any Company. Except for notices, reports and other documents and information expressly required to be furnished to the Lenders by the Administrative Agent under this Agreement or any of the other Loan Documents, none of the Agents or the Lead Arranger shall have any duty or responsibility to provide any Lender with any credit or other information concerning the business, operations, property, financial and other condition or creditworthiness of any Sponsor or any Company or Affiliate thereof which may come into possession of any Agent, the Lead Arranger or any of their respective officers, directors, employees, agents, attorneys in fact or other Affiliates. None of the Agents or Lead Arranger shall have any responsibility with respect to the accuracy of or the completeness of any information provided to the Lenders. Each of the Lenders acknowledges that the Lead Arranger's and the Administrative Agent's legal counsel in connection with the transactions contemplated by this Agreement is only acting as counsel to the Lead Arranger and the Administrative Agent and is not acting as counsel to any Lender.

(b) In determining compliance with any condition hereunder to the making of a Loan on the Closing Date that by its terms must be fulfilled to the satisfaction of a Lender, the Administrative Agent may presume that such condition is satisfactory to such Lender upon delivery by such Lender of its signature page to a Lender Addendum, and each such Lender shall be deemed to have acknowledged receipt of, and consented to and approved, each Loan Document and each other document required to be approved by any Agent or the Required Lenders (or such other Lenders as may be required to give such approvals), as applicable, on the date of delivery of such signature page.

Section 8.07. Right to Indemnity. Each Lender, in proportion to its Pro Rata Share, severally agrees to indemnify each Agent and the Lead Arranger, to the extent that such Agent or the Lead Arranger shall not have been reimbursed by any Company, for

and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses (including reasonable counsel fees and disbursements) or disbursements of any kind or nature whatsoever which may be imposed on, incurred by or asserted against such Agent or Lead Arranger in exercising its powers, rights and remedies or performing its duties and responsibilities hereunder or under the other Loan Documents or otherwise in its capacity as such Agent or Lead Arranger in any way relating to or arising out of this Agreement or the other Loan Documents; provided, subject to Section 8.03(b)(ii), no Lender shall be liable for any portion of such liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements that are found by a final and nonappealable decision of a court of competent jurisdiction to have resulted solely from such Agent's or the Lead Arranger's gross negligence or willful misconduct. If any indemnity furnished to any Agent or Lead Arranger for any purpose shall, in the opinion of such Agent or Lead Arranger, be insufficient or become impaired, such Agent or Lead Arranger may call for additional indemnity or advance of funds and cease, or not commence, to do the acts indemnified against until such additional indemnity or advance of funds is furnished; provided, in no event shall this sentence require any Lender to indemnify any Agent or Lead Arranger against any liability, obligation, loss, damage, penalty, action, judgment, suit, cost, expense or disbursement in excess of such Lender's Pro Rata Share thereof; and provided, further, subject to Section 8.03(b)(ii), this sentence shall not be deemed to require any Lender to indemnify any Agent or the Lead Arranger against any liability, obligation, loss, damage, penalty, action, judgment, suit, cost, expense or disbursement that is found by a final and nonappealable decision of a court of competent jurisdiction to have resulted solely from such Agent's or Lead Arranger's gross negligence or willful misconduct.

Section 8.08. Successor Agents. Any Agent may resign at any time by giving thirty (30) days' prior written notice thereof to the Lenders, the Borrower and any other Agent. Upon any such notice of resignation, the Required Lenders shall have the right, upon five (5) Business Days' notice to the Borrower, to appoint a successor for such resigning Agent; provided that if no such successor(s) shall have been so appointed by the Required Lenders and accepted such appointment within thirty (30) days after the resigning Agent gives notice of its resignation, then the resigning Agent may on behalf of the Lenders appoint a successor for such resigning Agent. Whether or not a successor has been appointed, such resignation shall become effective thirty (30) days after the resigning Agent has given notice of its resignation. Upon the acceptance of any appointment as the applicable Agent hereunder by an applicable successor, such successor shall thereupon succeed to and become vested with all the rights, powers, privileges and duties of the such Agent and the retiring Agent shall promptly (i) to the extent in its possession, transfer to such successor all sums, Capital Stock and other items of Collateral held under the Security Documents, together with all records and other documents necessary or appropriate in connection with the performance of the duties of the applicable successor Agent under the Loan Documents, and (ii) execute and deliver to such successor such amendments to financing statements, and take such other actions, as may be necessary or appropriate in connection with the assignment to such successor of the security interests created under the Security Documents, whereupon such retiring Agent shall be discharged from its duties and obligations hereunder and under the other Loan Documents (except that in the case of any collateral security held by such Agent on behalf of the Lenders under any of the Loan Documents, the retiring Agent shall continue to hold such collateral security until such time as a successor Agent is appointed) and (y) except for any fee, expense or indemnity payments owed to the retiring Agent, all payments, communications and determinations provided to be made by, to or through such Agent shall instead be made by or to each Lender directly, until such time, if any, as the Required Lenders or the retiring Agent appoint a successor Agent as provided for above. The fees payable by the Borrower to a successor Agent shall be the same as those payable to its predecessor unless otherwise agreed between the Borrower and such successor. After any retiring Agent's resignation hereunder as such Agent the provisions of this Article VIII and Section 9.05 shall inure to its benefit, as well as to the benefit of its sub-agents and their respective Related Parties, as to any actions taken or omitted to be taken by it while it was such Agent hereunder. In the event any Agent, by any final determination by a Gaming Authority pursuant to applicable Gaming Laws (x) has been determined as "unsuitable" or "disqualified" to act in its capacity under the Loan Documents as such Agent or (y) has been denied the issuance of any license or other approval required under applicable Gaming Laws to be held by it as such Agent, such Agent shall resign in accordance with this Section 8.08.

Section 8.09. Loan Documents.

(a) Agents under Loan Documents. Each Lender hereby further authorizes the Administrative Agent (or, if applicable, the Collateral Agent) on behalf of and for the benefit of the Secured Parties, to be the representative of the Secured Parties with respect to the Subsidiary Guaranty, the Completion Guaranty, the Collateral, each of the Security Documents and each of the other Loan Documents. Without further written consent or authorization from the Lenders or any other Secured Parties, the Administrative Agent or the Collateral Agent may (and at the written request and expense of the Borrower, shall) execute any documents or instruments necessary to (i) release any Lien encumbering any item of Collateral that is the subject of a sale or other disposition of assets permitted under this Agreement or the other Loan Documents or to which the Required Lenders (or such other Lenders as may be required to give such consent under Section 9.08) have otherwise consented or which constitutes Excluded Collateral (or otherwise subordinate any Lien to any Senior Permitted Lien of the types described in Section 6.02(d), (e), (g), (j), (m), (u), (v) or (cc), (ii) release any Subsidiary Guarantor from the Pledge and Security Agreement in accordance with the terms thereof or from the Subsidiary Guaranty in accordance with the terms thereof or with respect to which the Required Lenders (or such other Lenders as may be required to give such consent under Section 9.08) have otherwise consented, (iii) release the Equity Pledgor from the Equity Pledge Agreement to which the Equity Pledgor is a party in connection with an Equity Pledgor Transaction or (iv) release the Completion Guarantor from the Completion Guaranty in accordance with the terms thereof or with respect to which the Required Lenders (or such other Lenders

as may be required to give such consent under Section 9.08(a)) have otherwise consented. Additionally, the Lenders irrevocably authorize the Administrative Agent or the Collateral Agent to release any Lien on any property granted to or held by the Collateral Agent in their behalf under any Loan Document and to release any Subsidiary Guarantor from its obligations under the Subsidiary Guaranty upon termination of all Commitments and payment in full of all Obligations (other than obligations under Specified Hedging Agreements and Specified Cash Management Agreements for which acceptable alternative arrangements have been made with, and agreed to by, the applicable Specified Hedge Counterparties or Specified Cash Management Counterparties). In the event that any Loan Party incurs any Indebtedness under an FF&E Agreement in respect of any assets owned by any Loan Party prior to the incurrence of such Indebtedness, and such assets are to become Specified FF&E Collateral under such FF&E Agreement, any Liens created by any Loan Document in respect of such assets shall be automatically released upon the incurrence of such Indebtedness and the Administrative Agent and the Collateral Agent shall promptly (and the Lenders hereby authorize the Administrative Agent and the Collateral Agent to) take such action and execute any such documents as may be reasonably requested by the Borrower and at the Borrower's expense in connection with the release of any Liens created by a Loan Document in respect of such assets. Upon request by the Administrative Agent at any time, the Required Lenders will confirm in writing the Collateral Agent's authority to release its interest in particular types or items of property, or the Administrative Agent's authority to release any Subsidiary Guarantor from its obligations under the Guaranty pursuant to this Section 8.09. No Agent shall be responsible for or have a duty to ascertain or inquire into any representation or warranty regarding the existence, value or collectability of the Collateral, the existence, priority or perfection of the Collateral Agent's Lien thereon, or any certificate prepared by any Company in connection therewith, nor shall any Agent be responsible or liable to the Lenders for any failure to monitor or maintain any portion of the Collateral.

(b) Right to Enforce Loan Documents and Realize on Collateral. Notwithstanding anything to the contrary contained herein or in any other Loan Document, the authority to enforce rights and remedies hereunder and under the other Loan Documents against the Companies or any of them shall be vested exclusively in, and all actions and proceedings at law in connection with such enforcement shall be instituted and maintained exclusively by, the Administrative Agent or the Collateral Agent or as the Required Lenders may require or otherwise direct, for the benefit of all the Lenders or the Secured Parties, as applicable; provided, however, that the foregoing shall not prohibit (i) any Agent from exercising on its own behalf the rights and remedies that inure to its benefit (solely in its capacity as an Agent) hereunder and under the other Loan Documents, (ii) any Lender from exercising setoff rights in accordance with, and subject to, the terms of this Agreement, or (iii) any Lender from filing proofs of claim on its own behalf during the pendency of a proceeding relative to any Company under any Debtor Relief Law. In furtherance of the foregoing, (x) no Secured Party (other than the Collateral Agent) shall have any right individually to realize upon any of the Collateral and (y) in the event of a foreclosure or similar enforcement actions by the Collateral Agent on any of the Collateral pursuant to a public or private sale or other disposition, any Lender may be the purchaser of any or all of such Collateral at any such sale but only the Collateral Agent, as representative of the Secured Parties (and not any Lender or Lenders in its or their respective individual capacities unless the Required Lenders shall otherwise agree in writing) shall be entitled, for the purpose of bidding and making settlement or payment of the purchase price for all or any portion of the Collateral sold at any such public sale, to use and apply any of the Obligations as a credit on account of the purchase price for any Collateral payable by the Collateral Agent at such sale or other disposition.

Section 8.10. No Liability. Notwithstanding anything to the contrary contained in this Agreement or any other Loan Document, the Lead Arranger, in its capacity as such, shall not have any duties or responsibilities or incur any liability, under this Agreement or any other Loan Document; provided, that the Lead Arranger shall be a third party beneficiary to, and entitled to all benefits, of this Article VIII and Section 9.05 and entitled to enforce the same as a third party beneficiary, as if a direct party hereto. Notwithstanding anything to the contrary contained in this Agreement, the Collateral Agent, in its capacity as such, shall not have any duties or responsibilities and shall not incur any liability, under this Agreement (for purposes of clarification, it being understood that the foregoing shall not limit the duties, responsibilities or liabilities of the Collateral Agent under any other Loan Document or agreement to which it may be a party); provided, that the Collateral Agent shall be a third party beneficiary to, and entitled to all benefits, of this Article VIII and Section 9.05 and entitled to enforce the same as a third party beneficiary, as if a direct party hereto.

Section 8.11. Withholdings. To the extent required by any applicable law, the Administrative Agent may withhold from any payment to any Lender an amount equivalent to any applicable withholding tax. If the forms or other documentation required by Section 2.19 are not delivered to the Administrative Agent, then the Administrative Agent may withhold from any payment to any Lender not providing such forms or other documentation, an amount equivalent to the applicable withholding tax. If the IRS or any other Governmental Authority asserts a claim that the Administrative Agent did not properly withhold tax from amounts paid to or for the account of any Lender because the appropriate form was not delivered or was not properly executed or because such Lender failed to notify the Administrative Agent of a change in circumstance which rendered the exemption from, or reduction of, withholding tax ineffective or for any other reason, such Lender shall indemnify the Administrative Agent fully for all amounts paid, directly or indirectly, by the Administrative Agent as tax or otherwise, including any penalties or interest and together with all expenses (including legal expenses, allocated internal costs and out-of-pocket expenses) incurred. Each Lender hereby authorizes the Administrative Agent to set off and apply any and all amounts at any time owing to such Lender under any Loan Document or otherwise payable by the Administrative Agent to the Lender from any other source against any amount due to the Administrative Agent under this Section 8.11. The provisions of this Section 8.11 shall survive the resignation or replacement of the Administrative Agent or any assignment of rights by, or the replacement of, any Lender, the termination of the Commitments and the repayment, satisfaction or discharge of all

obligations under any Loan Document.

Section 8.12. Specified Hedging Agreement and Specified Cash Management Agreement. No Specified Hedging Counterparty or Specified Cash Management Counterparty that obtains the benefits of Section 7.02 or any Collateral by virtue of the provisions hereof or of any Security Document shall have any right to notice of any action or to consent to, direct or object to any action hereunder or under any other Loan Document or otherwise in respect of the Collateral (including the release or impairment of any Collateral) other than in its capacity as a Lender and, in such case, only to the extent expressly provided in the Loan Documents. Notwithstanding any other provision herein to the contrary, the Administrative Agent shall not be required to verify the payment of, or that other satisfactory arrangements have been made with respect to, Specified Hedging Agreements and Specified Cash Management Agreements, and Obligations arising under Specified Hedge Agreements and Specified Cash Management Agreements shall be excluded from the application of Section 7.02 unless, in each case the Administrative Agent has received written notice of such Specified Hedging Agreements or Specified Cash Management Agreements, together with such supporting documentation as the Administrative Agent may request, from the Borrower or the applicable Specified Hedging Counterparty or Specified Cash Management Counterparty.

ARTICLE IX.

MISCELLANEOUS

Section 9.01. Notices.

(a) Notices Generally. All notices, requests and demands to or upon the respective parties hereto to be effective shall be in writing (which may be by facsimile), and, unless otherwise expressly provided herein (including as provided in paragraph (b) below), shall be deemed to have been duly given or made when delivered, or three (3) Business Days after being deposited in the mail, postage prepaid, or, in the case of facsimile notice, when received, addressed (a) in the case of the Borrower (or any other Loan Party), the Administrative Agent and the other parties below, as follows and (b) in the case of the Lenders, as set forth in the Lender Addendum to which such Lender is a party or, in the case of a Lender which becomes a party to this Agreement pursuant to an Assignment and Acceptance, in such Assignment and Acceptance or (c) in the case of any other Person, to such other address as such Person may hereafter give notice to the other parties hereto:

Borrower and the other Loan Parties:	Montreign Operating Company, LLC 204 State Route 17b Monticello, New York 12701 Attention: Chief Executive Officer Facsimile: (845) 807-0000
with a copy to (for informational purposes only and not constituting notice):	Paul, Weiss, Rifkind, Wharton & Garrison LLP 1285 Avenue of the Americas New York, New York 10019-6064 Attention: Harris B. Freidus Facsimile: (212) 492-0064 Telephone: (212) 373-3064
Credit Suisse AG, Cayman Islands Branch as Administrative Agent:	Credit Suisse AG Eleven Madison Avenue New York, New York 10010 Attention: Sean Portrait – Agency Manager Facsimile: (212) 322-2291 Telephone: (919) 994-6369 Email: agency.loanops@credit-suisse.com
with a copy to:	Latham & Watkins LLP 12670 High Bluff Drive San Diego, CA 92130 Attention: Brett Rosenblatt, Esq. Facsimile: 858-523-5450 Telephone: 858-523-5400

Credit Suisse AG, Cayman Islands Branch as Collateral Agent:	Credit Suisse AG, Cayman Islands Branch One Madison Avenue, 2nd Floor New York, New York 10010 Attention: Loan Operations – Boutique Management Telephone: (212) 538-6106 Email: list.ops-collateral@credit-suisse.com
with a copy to:	Latham & Watkins LLP 12670 High Bluff Drive San Diego, CA 92130 Attention: Brett Rosenblatt, Esq. Facsimile: 858-523-5450 Telephone: 858-523-5400

(b) Electronic Communications. Notices and other communications to the Lenders hereunder may be delivered or furnished by electronic communication (including e-mail and Internet or intranet websites) pursuant to procedures approved by the Administrative Agent; provided that the foregoing shall not apply to notices to any Lender pursuant to Article II if such Lender has notified the Administrative Agent in writing that it is incapable of receiving notices under such Article by electronic communication. The Administrative Agent or the Borrower may, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it; provided that approval of such procedures may be limited to particular notices or communications. Unless the Administrative Agent otherwise prescribes, (i) notices and other communications sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgement); provided that if such notice or other communication is not sent during the normal business hours of the recipient, such notice or communication shall be deemed to have been sent at the opening of business on the next business day for the recipient, and (ii) notices or communications posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient at its e-mail address as described in the foregoing clause (i) of notification that such notice or communication is available and identifying the website address therefor.

(c) The Platform.

(i) The Borrower hereby acknowledges that (A) the Lead Arranger or the Administrative Agent will make available to the Lenders materials and/or information provided by or on behalf of the Companies hereunder and under the other Loan Documents (collectively, the "Borrower Materials") by posting the Borrower Materials on SyndTrak Online or another similar electronic platform (the "Platform") and (B) certain of the Lenders may be "public-side" Lenders (i.e., Lenders that wish to receive information only of a type that would be publicly available with respect to the Companies or their securities if the Companies were public reporting companies) (each, a "Public Lender"). The Borrower hereby agrees that (W) all Borrower Materials that are to be made available to Public Lenders shall be clearly and conspicuously marked "PUBLIC" which, at a minimum, shall mean that the word "PUBLIC" shall appear prominently on the first page thereof; (X) by marking Borrower Materials "PUBLIC," the Borrower shall be deemed to have authorized the Administrative Agent and the Lenders to treat such Borrower Materials as containing only information of a type that would be publicly available with respect to the Companies or their securities if the Companies were public reporting companies for purposes of United States federal and state securities laws (provided, however, to the extent that such Borrower Materials constitute Information (as defined in Section 9.16), they shall be treated as set forth in Section 9.16); (Y) all Borrower Materials marked "PUBLIC" are permitted to be made available through a portion of the Platform designated as "Public Investor;" and (Z) the Administrative Agent shall be entitled to treat any Borrower Materials that are not marked "PUBLIC" as being suitable only for posting on a portion of the Platform not marked as "Public Investor." Notwithstanding the foregoing, the Loan Documents shall be deemed marked "PUBLIC" and notifications of changes in the terms of the Facility shall be deemed marked "PUBLIC", unless the Borrower notifies the Administrative Agent promptly that any such document contains material non-public information of a type that would not be publicly available with respect to the Companies or their securities if the Companies were public reporting companies. In addition, the Borrower hereby acknowledges and agrees that all financial statements and certificates furnished pursuant to Section 5.01(b), Section 5.01(c) and Section 5.01(d) shall be deemed marked "PUBLIC" unless any such financial statements or certificates contains material non-public information.

(ii) The Platform is provided "as is" and "as available." The Agent Parties (as defined below) do not warrant the accuracy or completeness of the Borrower Materials or the adequacy of the Platform and expressly disclaim liability for errors in, or omissions from, the Borrower Materials. No warranty of any kind, express, implied or statutory, including any warranty of

merchantability, fitness for a particular purpose, non-infringement of third party rights or freedom from viruses or other code defects, is made by any Agent party in connection with the Borrower Materials or the Platform. In no event shall the Administrative Agent or any of its Related Parties (collectively, the "Agent Parties") have any liability to the Companies, any Lender, any other Agent or any other Person for losses, claims, damages, liabilities or expenses of any kind (whether in tort, contract or otherwise) arising out of any Company's or the Administrative Agent's transmission of Borrower Materials through the Internet, except to the extent that such losses, claims, damages, liabilities or expenses are determined by a court of competent jurisdiction by a final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of such Agent Party; provided, however, that in no event shall any Agent Party have any liability to any Company, any Lender, any Agent, the Lead Arranger or any other Person for indirect, special, incidental, consequential or punitive damages (as opposed to direct or actual damages).

(d) Change of Address, Etc. Each of the parties hereto may change its address, telephone or facsimile number for notices and other communications hereunder by notice to the other parties hereto. In addition, each Lender agrees to notify the Administrative Agent from time to time to ensure that the Administrative Agent has on record (i) an effective address, contact name, telephone number, facsimile number and electronic mail address to which notices and other communications may be sent and (ii) accurate wire instructions for such Lender.

(e) Reliance by Agents and Lenders. The Agents, the Lead Arranger and the Lenders shall be entitled to rely and act upon any notices (including telephonic notices) purportedly given by or on behalf of any Company even if (i) such notices were not made in a manner specified herein, were incomplete or were not preceded or followed by any other form of notice specified herein, or (ii) the terms thereof, as understood by the recipient, varied from any confirmation thereof. The Borrower shall indemnify the Agents, the Lead Arranger, the Lenders and the Related Parties of each of them from all losses, costs, expenses and liabilities resulting from the reliance by such Person on each notice purportedly given by or on behalf of any Company. All telephonic notices to and other telephonic communications with the Administrative Agent may be recorded by the Administrative Agent, and each of the parties hereto hereby consents to such recording.

Section 9.02. Survival of Agreement. All covenants, agreements, representations and warranties made by any Company herein or in the documents, certificates or other instruments prepared or delivered in connection with or pursuant to this Agreement or in any other Loan Document shall be considered to have been relied upon by the Lenders shall survive the making of the Loans by the Lenders, regardless of any investigation made by the Lenders or on their behalf, and shall continue in full force and effect until the Obligations have been paid in full and the Commitments have been terminated. The agreements of the Loan Parties set forth in Section 2.17(c), Section 2.18, Section 2.19, Section 9.05 and Section 9.06 and the agreements of the Lenders set forth in Section 2.16, Section 8.03(b) and Section 8.07 shall remain operative and in full force and effect regardless of the expiration of the term of this Agreement, the consummation of the transactions contemplated hereby, the repayment of any of the Loans, the expiration of the Commitments, the invalidity or unenforceability of any term or provision of this Agreement or any other Loan Document or any investigation made by or on behalf of any Agent, Lead Arranger or Lender.

Section 9.03. Binding Effect. This Agreement shall become effective when it shall have been executed by each of the parties hereto and when the Administrative Agent shall have received counterparts hereof which, when taken together, bear the signatures of each of the other parties hereto.

Section 9.04. Successors and Assigns.

(a) Whenever in this Agreement any of the parties hereto, the Agents, the Lead Arranger or any Company is referred to, such reference shall be deemed to include the permitted successors and assigns of such Person; and all covenants, promises and agreements by or on behalf of the Companies, the Administrative Agent, the Collateral Agent or the Lenders that are contained in this Agreement or the other Loan Documents shall bind and inure to the benefit of their respective successors and assigns.

(b) Subject to the restrictions contained in the definition of "Eligible Assignee" and this clause (b) (including the last sentence hereof), any Lender may, without the consent of or notice to the Borrower or any other Person, in accordance with applicable law, at any time and from time to time sell to one or more Eligible Assignees (each, a "Participant") participating interests in any Loan owing to such Lender, any Commitment of such Lender or any other interest of such Lender hereunder and under the other Loan Documents. In the event of any such sale by a Lender of a participating interest to a Participant, such Lender's obligations under this Agreement shall remain unchanged, such Lender shall remain solely responsible for the performance thereof, such Lender shall remain the holder of any such Loan for all purposes under this Agreement and the other Loan Documents, and the Borrower, the Lead Arranger and the Agents shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement and the other Loan Documents. In no event shall any Participant under any such participation have any right to approve any amendment or waiver of any provision of any Loan Document, or any consent to any departure by any Company therefrom, except to the extent that such amendment, waiver or consent would increase the amount of any Commitment or extend the period of any Commitment, reduce the principal of, premium or interest on, the Loans or any Fees payable hereunder, postpone the date of any

scheduled amortization payments or the final maturity of the Loans, result in the release of all or substantially all of the Collateral (except to the extent such release is contemplated under, and in accordance with, this Agreement or the other Loan Documents) or the release of all or substantially all of the Guarantee obligations of the Subsidiary Guarantors under the Subsidiary Guaranty (except to the extent such release is contemplated under, and in accordance with, this Agreement or the other Loan Documents), in each case to the extent subject to such participation. The Borrower agrees that if amounts outstanding under this Agreement and the Loans are due or unpaid, or shall have been declared or shall have become due and payable upon the occurrence and continuance of an Event of Default, each Participant shall, to the maximum extent permitted by applicable law, be deemed to have the right of setoff in respect of its participating interest in amounts owing under this Agreement and the Loans to the same extent as if the amount of its participating interest were owing directly to it as a Lender under this Agreement (including pursuant to Section 9.06), provided that, in purchasing such participating interest, such Participant shall be deemed to have agreed to share with the Lenders the proceeds thereof as provided in Section 2.16 as fully as if it were a Lender hereunder. The Borrower also agrees that each Participant shall be entitled to the benefits of Section 2.17(c), Section 2.18 and Section 2.19 with respect to its participation in the Commitments and the Loans outstanding from time to time as if it was a Lender; provided that, in the case of Section 2.18 and Section 2.19, such Participant is in compliance with the requirements of said Section to the same extent as if it were a Lender and acquired its interest by assignment (it being understood that the documentation required under Section 2.19 shall be delivered to the participating Lender) pursuant to Section 9.01(c) at the time such Participant directly requests the benefits of Section 2.18 and Section 2.19 and provided, further, that such Participant (A) agrees to be subject to the provisions of Section 2.20 as if it were an assignee under Section 9.01(c) and (B) no Participant shall be entitled to receive any greater amount pursuant to Section 2.18 or Section 2.19 than the transferor Lender would have been entitled to receive in respect of the amount of the participation transferred by such transferor Lender to such Participant had no such transfer occurred. Each Lender that sells a participation shall, acting solely for this purpose as a non-fiduciary agent of the Borrower, maintain a register on which it enters the name and address of each Participant and the principal amounts (and stated interest) of each Participant's interest in the Loans or other obligations under the Loan Documents (the "Participant Register"); provided that no Lender shall have any obligation to disclose all or any portion of the Participant Register (including the identity of any Participant or any information relating to a Participant's interest in any commitments, loans, letters of credit or its other obligations under any Loan Document) to any Person except to the extent that such disclosure is necessary to establish that such commitment, loan, letter of credit or other obligation is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations. The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary. For the avoidance of doubt, the Administrative Agent (in its capacity as Administrative Agent) shall have no responsibility for maintaining a Participant Register. Notwithstanding anything to the contrary contained in this Agreement, (x) for purposes of clarification, no Agent shall be under any duty to ascertain, inquire into, monitor, enforce compliance with or otherwise make any determinations with respect to the sales of participating interests pursuant to this clause (b) (including (i) whether any Participant qualifies as an Eligible Assignee and (ii) as to whether an Eligible Assignee is a Disqualified Institution) and (y) neither any Agent nor any Lender (including any Lender selling participating interests to a Participant but excluding any Participant (who shall be liable to the Borrower in connection with such Participant not qualifying as an Eligible Assignee including as a result of qualifying as a Disqualified Institution)) shall be liable for any losses, damages, penalties, claims, demands, actions, judgments, suits, costs, expenses and disbursements of any kind or nature whatsoever incurred or suffered by any Person (including the Loan Parties) in connection with any Participant not qualifying as an Eligible Assignee; provided that any Lender participating interests to a Participant shall, as a condition to such sale, obtain a representation and warrant from such Participant that as of the date of such sale such Participant qualifies as an Eligible Assignee (which such Lender may accept in good faith but without due inquiry).

(c) Subject to the restrictions contained in this clause (c) (including the last two sentences hereof) and the definition of "Eligible Assignee", any Lender (an "Assignor") may, in accordance with applicable law and upon written consent of the Administrative Agent and the Borrower (except (I) in the case of assignments of Loans or Commitments to any Lender, any Affiliate of the assigning Lender or of another Lender or any Approved Fund, in which case the consent of the Borrower shall not be required, (II) in the case of assignments of Loans to any Lender, any Affiliate of the assigning Lender or of another Lender or any Approved Fund, in which case the consent of the Administrative Agent shall not be required and (III) in the case of assignments of Loans or Commitments by the Lead Arranger (or its Affiliates) during the primary syndication of the Facility to those Lenders previously disclosed to the Borrower by the Lead Arranger prior to the date hereof, in which case the consent of the Borrower shall not be required) (in each case not to be unreasonably withheld, conditioned or delayed), at any time and from time to time assign to any Lender, any Affiliate of the assigning Lender or of another Lender or any Approved Fund or to an additional bank, financial institution or other entity that is an Eligible Assignee (an "Assignee") all or any part of its rights and obligations under this Agreement pursuant to an Assignment and Acceptance, executed by such Assignee, such Assignor and, where the consent of the Borrower and/or the Administrative Agent is required pursuant to the foregoing provisions, by the Borrower and/or the Administrative Agent and delivered to the Administrative Agent for its acceptance and recording in the Register, together with a processing or recordation fee of $3,500 (which fee may be waived or reduced in the sole discretion of the Administrative Agent), an Administrative Questionnaire from the Assignee (to the extent such Assignee is not a Lender) and all applicable tax forms required pursuant to Section 2.19; provided, that no such assignment to an Assignee (other than any Lender or any Affiliate of the assigning Lender or of another Lender or any Approved Fund) shall be in an aggregate principal amount of less than $1,000,000, unless otherwise agreed by the Borrower and the

Administrative Agent (provided, that for purposes of the foregoing limitations only, any two or more Funds that concurrently invest in Loans and are managed by the same investment advisor, or investment advisors that are Affiliates of one another, shall be treated as a single Assignee or Assignor); provided further, that the Borrower shall have deemed to have consented to any such assignment unless it shall object thereto by written notice to the Administrative Agent within five (5) Business Days after having received notice thereof (and any consent of the Borrower to any assignment (whether an affirmative or deemed consent) shall be deemed a determination by the Borrower that the Assignee is not a Disqualified Institution of the type described in clause (b) or (c) of the definition thereof as of the date of assignment (for purposes of satisfaction of applicable criteria set forth in the definition of Eligible Assignee)). Any such assignment need not be ratable as among the facilities hereunder but shall be made as an assignment of a proportionate part of all of the Assignor's rights and obligations under this Agreement with respect to the Loan or the Commitment so assigned. Upon such execution, delivery, acceptance and recording, from and after the effective date determined pursuant to such Assignment and Acceptance, (x) the Assignee thereunder shall be a party hereto and, to the extent provided in such Assignment and Acceptance, have the rights and obligations of a Lender hereunder with respect to Commitments and/or Loans as set forth therein, and (y) the Assignor thereunder shall, to the extent provided in such Assignment and Acceptance, be released from its obligations under this Agreement (and, in the case of an Assignment and Acceptance covering all of an Assignor's rights and obligations under this Agreement, such Assignor shall cease to be a party hereto). Notwithstanding any provision of this Section 9.04(c), the consent of the Borrower shall not be required (i) at any time when any Default under Section 7.01(c) or (h) or any Event of Default under Section 7.01(b), (c), (h) or (i) shall have occurred and be continuing or the Loans then outstanding have become or otherwise been declared due and payable in whole or in part by acceleration or otherwise or (ii) in the case of assignments during the primary syndication of the Commitments and Loans to Persons identified in writing by the Administrative Agent to the Borrower on or prior to the Closing Date. In connection with any assignment of rights and obligations of any Defaulting Lender hereunder, no such assignment shall be effective unless and until, in addition to the other conditions thereto set forth herein, the parties to the assignment shall make such additional payments to the Administrative Agent in an aggregate amount sufficient, upon distribution thereof as appropriate (which may be outright payment, purchases by the assignee of participations or sub-participations, or other compensating actions, including funding, with the consent of the Borrower and the Administrative Agent, the applicable Pro Rata Share of Loans previously requested but not funded by the Defaulting Lender, to each of which the applicable assignee and assignor hereby irrevocably consent), to (x) pay and satisfy in full all payment liabilities then owed by such Defaulting Lender to the Administrative Agent and each other Lender hereunder (and interest accrued thereon), and (y) acquire (and fund as appropriate) its full Pro Rata Share of all Loans. Notwithstanding the foregoing, in the event that any assignment of rights and obligations of any Defaulting Lender hereunder shall become effective under applicable law without compliance with the provisions of this paragraph, then the assignee of such interest shall be deemed to be a Defaulting Lender for all purposes of this Agreement until such compliance occurs. Furthermore, notwithstanding anything to the contrary contained in this Agreement (x) for purposes of clarification, no Agent shall be under any duty to ascertain, inquire into, monitor, enforce compliance with or otherwise make any determinations with respect to whether any Assignee qualifies as an Eligible Assignee (including as to whether an Eligible Assignee is a Disqualified Institution), (y) neither any Agent nor any Lender (excluding any Assignee (who shall be liable to the Borrower in connection with such Assignee not qualifying as an Eligible Assignee) (including as the result of qualifying as a Disqualified Institution) shall be liable for any losses, damages, penalties, claims, demands, actions, judgments, suits, costs, expenses and disbursements of any kind or nature whatsoever incurred or suffered by any Person (including the Loan Parties) in connection with any Assignee not qualifying as an Eligible Assignee (including as a result of qualifying as a Disqualified Institution); provided that any Assignor shall, as a condition to any assignment to an Assignee, obtain a representation and warranty from such Assignee that as of the date of such assignment, such Assignee qualifies as an Eligible Assignee (which such Assignor may accept in good faith but without due inquiry) and (z) any consent of the Borrower to any assignment under this clause (c) (whether an affirmative or deemed consent) shall be deemed a determination by the Borrower that the Assignee is not a Disqualified Institution pursuant to clause (b) or (c) of the definition thereof as of the date of assignment.

(d) Upon its receipt of an Assignment and Acceptance executed by an Assignor (other than the execution by a Terminated Lender or a Disqualified Institution that has otherwise pursuant to this Agreement been deemed to have consented thereto) and an Assignee (and, in any case where the consent of any other Person is required by Section 9.04(c), by each such other Person), an Administrative Questionnaire completed in respect of the Assignee (unless the Assignee shall already be a Lender hereunder), the processing and recordation fee referred to in paragraph (c) above, if applicable, and any applicable tax forms, the Administrative Agent shall (i) promptly accept such Assignment and Acceptance and (ii) on the effective date determined pursuant thereto record the information contained therein in the Register. On or within five (5) Business Days after such effective date, the Borrower, at its own expense, upon request, shall execute and deliver to the Assignor and Assignee, respectively (in exchange for any Note of the assigning Lender), a new Note or Notes to such Assignee or its registered assigns in an amount equal to the Commitment or share of outstanding Loans assumed or acquired by it pursuant to such Assignment and Acceptance and, if the Assignor has retained any portion of the Commitments or share of outstanding Loans, upon request, a new Note or Notes to the Assignor or its registered assigns in an amount equal to such Commitments or share of outstanding Loans, as the case may be, retained by it hereunder. Such new Note or Notes shall otherwise be in the form of the Note or Notes replaced thereby. Any assignment of any Loan, whether or not evidenced by a Note, shall be effective only upon appropriate entries with respect thereto being made in the Register (and each Note shall expressly so provide).

(e) For the avoidance of doubt, the parties to this Agreement acknowledge that the provisions of this Section 9.04 concerning assignments of Loans and Notes relate only to absolute assignments and that such provisions do not prohibit assignments creating security interests, including any pledge or assignment by a Lender of any Loan or Note to (x) any Federal Reserve Bank or (y) any lender of a Lender, in each case, in accordance with applicable law; provided that no such pledge or assignment shall release the relevant Lender from any of its obligations under this Agreement or any other Loan Document.

(f) The Borrower shall not, and shall ensure that none of the other Companies will, assign or delegate any of its rights or duties hereunder or under any other Loan Document without the prior written consent of the Administrative Agent and each Lender, and any attempted assignment without such consent shall be null and void.

(g) Notwithstanding anything to the contrary contained in this Agreement, any Lender may, at any time, assign all or a portion of its rights and obligations under this Agreement with respect to Term B Loans or, at any time after the termination or expiration of all Term A Loan Commitments, Tem A Loans to a Person who is or will become, after such assignment, an Affiliated Lender subject to the following limitations (for purposes of clarification, any such assignments also being subject to the other applicable provisions of this Section 9.04, including clause (c) above, provided that in no event shall the Borrower's consent be required for assignments to an Affiliated Lender):

(i) Affiliated Lenders will not receive information, reports or other materials provided solely to Lenders by any Agent or any Lender, other than the right to receive notices of prepayments and other administrative notices in respect of its Loans required to be delivered to Lenders pursuant to Article II, will not be permitted to attend or participate in conference calls or meetings attended solely by the Lenders and the Agents (which may also include one or more of their respective Related Parties) and will not have access to any electronic site established for the Lenders or confidential communication from counsel or financial advisors of the Agents or Lenders;

(ii) each Affiliated Lender that purchases any Loans pursuant to this clause (g) shall notify the seller on or prior to the time of such sale that it is an Affiliated Lender (the parties hereto agreeing that neither any Agent nor any other Person (other than the applicable Affiliated Lender) shall be under a duty to monitor or otherwise take any actions with respect to the foregoing and neither any Agent nor any other Person (other than the applicable Affiliated Lender) shall be liable for any losses, damages, penalties, claims, demands, actions, judgments, suits, costs, expenses and disbursements of any kind or nature whatsoever incurred or suffered by any Person in connection with any compliance or non-compliance with the foregoing);

(iii) the aggregate principal amount of Loans held at any one time by all Affiliated Lenders shall not exceed 25% of the then outstanding aggregate principal amount of all Loans at such time outstanding (such percentage, the "Affiliated Lender Cap"); provided that each of the parties hereto agrees and acknowledges that no Agent shall be liable for any losses, damages, penalties, claims, demands, actions, judgments, suits, costs, expenses and disbursements of any kind or nature whatsoever incurred or suffered by any Person in connection with any compliance or non-compliance with this clause (g)(iii) or any purported assignment exceeding such Affiliated Lender Cap limitation;

(iv) as a condition to each assignment pursuant to this clause (g), (A) the Administrative Agent shall have been provided a notice in the form of Exhibit G-2 in connection with each assignment to an Affiliated Lender or a Person that upon effectiveness of such assignment would constitute an Affiliated Lender, and (without limitation of the provisions of clause (g)(iii) above) shall be under no obligation to record such assignment in the Register until three (3) Business Days after receipt of such notice and (B) the Administrative Agent shall have consented to such assignment (which consent shall not be withheld unless the Administrative Agent reasonably believes that such assignment would violate clause (g)(iii) of this Section 9.04);

(v) no Affiliated Lender shall be entitled to bring actions against any Agent, in its role as such, or receive advice of counsel or other advisors to any Agent or any other Lenders or challenge the attorney client privilege of their respective counsel;

(vi) no Agent shall be responsible or have any liability for, or have any duty to ascertain, inquire into, monitor or enforce compliance with the provisions of this Agreement or the other Loan Documents relating to Affiliated Lenders (without limiting the generality of the foregoing, no Agent shall (x) be obligated to ascertain, monitor or inquire as to whether any Lender or Participant or prospective Lender or Participant is an Affiliated Lender or (y) have any liability with respect to or arising out of any assignment or participation of Loans, or disclosure of confidential information, to any Affiliated Lender);

(vii) each Affiliated Lender agrees to notify the Administrative Agent promptly (and in any event within five (5) Business Days) if it acquires any Person who is also a Lender, and each Lender agrees to notify the Administrative Agent promptly (and in any event within five (5) Business Days) if it becomes an Affiliated Lender. Such notice shall contain the type of information required and be delivered to the same addressee as set forth in Exhibit G-2; and

(viii) any Affiliated Lender may contribute its Loans to the Borrower for no consideration so long as such Loans are

promptly thereafter cancelled in full by the Borrower.

(h) Notwithstanding anything in Section 9.08(b) or the definitions of "Required Lenders" to the contrary, for purposes of determining whether the Required Lenders have (i) consented (or not consented) to any amendment, modification, waiver, consent or other action with respect to any of the terms of any Loan Document or any departure by any Company therefrom, or subject to 9.04(i), any plan of reorganization pursuant to any Debtor Relief Law, (ii) otherwise acted on any matter related to any Loan Document, or (iii) directed or required the Administrative Agent or any Lender to undertake any action (or refrain from taking any action) with respect to or under any Loan Document, no Affiliated Lender shall have any right to consent (or not consent), otherwise act or direct or require any Agent or any Lender to take (or refrain from taking) any such action, in each case, to the extent such action does not require the consent of each Lender or each affected Lender or does not adversely affect such Affiliated Lender in any material respect as compared to other Lenders and, in each such case:

(i) all Loans held by any Affiliated Lenders shall be deemed to be not outstanding for all purposes of calculating whether the Required Lenders have taken any actions; provided, however, that each such Affiliated Lender shall be entitled to receive its *pro rata* share of any payment to which Lenders or consenting Lenders are entitled pursuant to any amendment, modification, waiver, consent or other such similar action regardless of whether such Affiliated Lender was entitled to vote with respect thereto; and

(ii) all Loans held by Affiliated Lenders shall be deemed to be not outstanding for all purposes of calculating whether all Lenders have taken any action unless the action in question requires the consent of each of the Lenders directly affected thereby or all of the Lenders; provided, however, that each such Affiliated Lender shall be entitled to receive its *pro rata* share of any payment to which Lenders or consenting Lenders are entitled pursuant to any amendment, modification, waiver, consent or other such similar action regardless of whether such Affiliated Lender was entitled to vote with respect thereto.

(i) For purposes of voting on any plan of reorganization or plan of liquidation pursuant to any Debtor Relief Laws (a "Bankruptcy Plan"), each Affiliated Lender hereby agrees (x) not to vote on such Bankruptcy Plan, (y) if such Affiliated Lender, solely in its capacity as a Lender, does vote on such Bankruptcy Plan notwithstanding the restriction in the foregoing clause (x), such vote will be deemed not to be in good faith and shall be "designated" pursuant to Section 1126(e) of the Bankruptcy Code (or any similar provision in any other Debtor Relief Laws), and such vote shall not be counted in determining whether the applicable class has accepted or rejected such Bankruptcy Plan in accordance with Section 1126(c) of the Bankruptcy Code (or any similar provision in any other Debtor Relief Laws) and (z) not to contest any request by any party for a determination by court of competent jurisdiction effectuating the foregoing clause (y), in each case under this Section 9.04(i) unless such Bankruptcy Plan adversely affects such Affiliated Lender more than other Lenders in any material respect and (C) each Affiliated Lender hereby irrevocably appoints the Administrative Agent (such appointment being coupled with an interest) as such Affiliated Lender's attorney-in-fact, with full authority in the place and stead of such Affiliated Lender and in the name of such Affiliated Lender (solely in respect of Loans therein and not in respect of any other claim or status such Affiliated Lender may otherwise have), from time to time in the Administrative Agent's discretion to take any action and to execute any instrument that the Administrative Agent may deem reasonably necessary or appropriate to carry out the provisions of this Section 9.04(i) including to ensure that any vote of such Affiliated Lender on any Bankruptcy Plan is withdrawn or otherwise not counted.

(j) By way of clarification and not limitation, no assignment of any Commitment, Loan or other interest of a Lender under any Facility shall be made to any Company or any Affiliate of a Company, other than an Affiliated Lender upon and subject to the terms and conditions of paragraphs (g), (h) and (i) of this Section 9.04 above, and

(k)

(i) No assignment or participation shall be made to any Person that was a Disqualified Institution as of the date (the "Trade Date") on which the assigning Lender entered into a binding agreement to sell and assign all or a portion of its rights and obligations under this Agreement to such Person (unless the Borrower has consented to such assignment in writing in its sole and absolute discretion, in which case such Person will not be considered a Disqualified Institution pursuant to clauses (b) and (c) of the definition thereof for the purpose of such assignment or participation). For the avoidance of doubt, with respect to any assignee that becomes a Disqualified Institution after the applicable Trade Date (including as a result of the delivery of a notice pursuant to, and/or the expiration of the notice period referred to in, the definition of "Disqualified Institution"), (x) such assignee shall not retroactively be disqualified from becoming a Lender and (y) the execution by the Borrower of an Assignment and Acceptance with respect to such assignee will not by itself result in such assignee no longer being considered a Disqualified Institution. Any assignment in violation of this Section 9.04(k)(i) shall not be void, but, in addition to any other rights or remedies the Borrower may have with respect to such Disqualified Institution at law or in equity, the other provisions of this Section 9.04(k) shall apply.

(ii) If any assignment or participation is made to any Disqualified Institution without the Borrower's prior written

consent in violation of Section 9.04(k)(i) above, or if any Person becomes a Disqualified Institution after the applicable Trade Date, the Borrower may at its sole expense, upon notice to the applicable Disqualified Institution and the Administrative Agent, (A) in the case of outstanding Loans held by such Disqualified Institution, prepay such Loans by paying the lesser of (x) the principal amount thereof and (y) the amount that such Disqualified Institution paid to acquire such Loans, in each case plus accrued interest, accrued Fees and all other amounts (other than principal amounts) payable to it hereunder (other than prepayment premiums pursuant to Section 2.12(c)) and/or (B) require such Disqualified Institution to assign, without recourse (in accordance with and subject to the restrictions contained in this Section 9.04), all of its interest, rights and obligations under this Agreement to one or more Eligible Assignees at the lesser of (x) the principal amount thereof and (y) the amount that such Disqualified Institution paid to acquire such interests, rights and obligations, in each case plus accrued interest, accrued fees and all other amounts (other than principal amounts) payable to it hereunder (for the avoidance of doubt, excluding prepayment premiums pursuant to Section 2.12(c)) (provided that in the event such Disqualified Institution does not execute an Assignment and Acceptance within one Business Day after having received a request therefor, such Disqualified Institution shall be deemed to have consented to such Assignment and Acceptance).

(iii) Notwithstanding anything to the contrary contained in this Agreement, each Disqualified Institution party hereto hereby agrees that the provisions of Sections 9.04(g)(i), 9.04(h) (made applicable to all Loans of such Disqualified Institution) and 9.04(i) shall, in each case, be deemed applicable to it *mutatis mutandis* as if it was an Affiliated Lender thereunder, such provisions being incorporated into this clause (iii) by this reference as though specifically set forth herein and made so applicable.

(iv) No Agent shall be responsible or have any liability for, or have any duty to ascertain, inquire into, monitor or enforce compliance with the provisions of this Agreement or the other Loan Documents relating to Disqualified Institutions. Without limiting the generality of the foregoing, no Agent shall (x) be obligated to ascertain, monitor or inquire as to whether any Lender or Participant or prospective Lender or Participant is a Disqualified Iinstitution or (y) have any liability with respect to or arising out of any assignment or participation of Loans, or disclosure of confidential information, to any Disqualified Institution.

Section 9.05. Expenses; Indemnity.

(a) Whether or not the Transactions shall be consummated, the Borrower agrees to pay promptly (i) all the actual, reasonable and documented out-of-pocket costs and expenses of the Agents and the Lead Arranger in connection with (v) the syndication of the Loans and Commitments, (w) the negotiation, preparation, execution and administration of the Loan Documents, (x) any consents, amendments, waivers or other modifications thereto and the transactions contemplated thereby, (y) creating, perfecting and insuring Liens on the Collateral in favor of the Collateral Agent, for the benefit of the Secured Parties (including filing and recording fees, expenses and taxes, stamp or documentary taxes, search fees and title insurance premiums), and (z) the custody or preservation of any of the Collateral, including reasonable fees, expenses and disbursements of (I) outside counsel to the Agents and the Lead Arranger (such counsel to be limited to one general transaction counsel, one local New York counsel, one local New York gaming counsel and, if reasonably required, one local counsel in any other relevant jurisdiction), and (II) the Construction Consultant, the Insurance Advisor and any other appraisers, advisors or consultants; and (ii) all actual and documented out-of-pocket costs and expenses, including outside attorneys' fees, disbursements and other charges and costs of settlement, incurred by the Lead Arranger, any Agent or any Lender in enforcing any Obligations of, or in collecting any payments due from, any Company hereunder or under the other Loan Documents (or any other party to a Subordination Agreement) (including in connection with the inspection of the books and records of any Company, the sale of, collection from, or other realization upon any of the Collateral or the enforcement of the Security Documents) or in connection with any refinancing or restructuring of the credit arrangements provided hereunder in the nature of a "work-out" or pursuant to any insolvency or bankruptcy cases or proceedings (provided that, in the case of this clause (ii), such reimbursement for attorneys' fees shall be with respect to the Administrative Agent's counsel and one set of counsel for the Lenders as selected by the Required Lenders only (which shall include in each case (I) workout or other specialty related counsel, (II) general transaction related counsel, (III) local New York related counsel and (IV) local New York gaming related counsel)), and in the case of an actual or perceived conflict of interest as reasonably determined by the affected Person or Persons, one additional set of counsel (including only one additional (I) workout or other specialty related counsel, (II) general transaction related counsel, (III) local New York related counsel and/or (IV) local New York gaming related counsel) to each Person or group of affected Persons similarly situated taken as a whole).

(b) The Borrower agrees, whether or not the Transactions have been consummated, to indemnify and defend each Agent, the Lead Arranger, each Lender and each Related Party of any of the foregoing Persons (each such Person being called an "Indemnitee") against, and to hold each Indemnitee harmless from, and shall pay or reimburse any such Indemnitee for, any and all documented losses, claims, damages, liabilities and related costs and expenses, including reasonable counsel fees, disbursements and other charges, incurred by or asserted against any Indemnitee arising out of, in any way connected with, or as a result of (i) the execution or delivery of this Agreement or any other Loan Document or any agreement or instrument contemplated hereby or thereby, the performance by the parties hereto or thereto of their respective obligations hereunder or thereunder or the consummation of the Transactions or the

other transactions contemplated hereby or thereby, (ii) any Loans or the use of the proceeds therefrom, (iii) any claim, litigation, investigation or proceeding and the prosecution and defense thereof relating to any of the foregoing or the Transactions, whether or not any Indemnitee is a party thereto and whether or not such claim, litigation, investigation or proceeding is initiated by the Borrower or any Affiliate of the Borrower or any other Person, (iv) actions of the Lead Arranger in arranging and/or syndicating the Loans and/or the Facility, or (v) any actual or alleged presence or Release of Hazardous Materials on any property owned or operated by any Loan Party or any Unrestricted Subsidiary, or any Environmental Liability related in any way to any Loan Party or any Unrestricted Subsidiary; provided that such indemnity shall not, as to any Indemnitee, be available (A) to the extent that such losses, claims, damages, liabilities or related costs and expenses are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted primarily from the gross negligence or willful misconduct of such Indemnitee or its Related Parties (and, upon any such determination, any indemnification payments with respect to such losses, claims, damages, liabilities or related costs and expenses previously received by such Indemnitee shall be subject to reimbursement by such Indemnitee), (B) to the extent arising out of claims or disputes between two or more Indemnitees (other than any Indemnitee acting in their capacities as the Lead Arranger or Agent) and that does not arise from an act or omission of the Borrower or any of its Affiliates or (C) any settlement entered into by such Indemnitee without the Borrower's written consent, such consent not to be unreasonably withheld, delayed or conditioned (provided, however, if at any time an Indemnitee shall have requested that the Borrower reimburse such Indemnitee for legal or other expenses in connection with investigating, responding to or defending any proceeding, the Borrower shall be liable for any settlement of any proceeding effected without the Borrower's written consent if (a) such settlement is entered into more than twenty (20) Business Days after receipt by the Borrower of such request for reimbursement and (b) the Borrower shall not have reimbursed such Indemnitee in accordance with such request prior to the date of such settlement). To the extent that the undertakings to defend, indemnify, pay and hold harmless set forth in this Section 9.05(b) may be unenforceable in whole or in part because they are violative of any law or public policy, the Borrower shall contribute the maximum portion that it is permitted to pay and satisfy under applicable law to the payment and satisfaction of all indemnified liabilities incurred by Indemnitees or any of them.

(c) To the extent permitted by applicable law, the Borrower shall not assert, and hereby waives, and shall not permit any Loan Party to assert and shall cause each Loan Party to waive, any claim against any Indemnitee, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement or any agreement or instrument contemplated hereby, the Transactions or any Loan or the use of the proceeds thereof.

(d) To the extent permitted by applicable law and except to the extent expressly provided for in Section 2.09, Section 2.17(c), Section 2.18, Section 2.19, or Section 2.20, no Agent nor Lender shall assert, and each Agent and each Lender hereby waives, any claim against any Company, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement or any agreement or instrument contemplated hereby, the Transactions or any Loan or the use of the proceeds thereof; provided that this clause (d) shall in no manner limit any Indemnitee's rights pursuant to Section 9.05(b) with respect to special, indirect, consequential or punitive damages payable by such Indemnitee to another Person. The indemnity and other obligations of the Borrower under this Section 9.05 shall not apply with respect to Taxes, other than any Taxes that represent losses, claims, damages, etc. arising from any non-Tax claim.

Section 9.06. Adjustments; Setoff. Notwithstanding Section 8.09(b), if an Event of Default shall have occurred and be continuing, each Lender and each of its Affiliates is hereby authorized at any time and from time to time, except to the extent prohibited by law, with the prior written consent of the Administrative Agent, to set off and apply any and all deposits (general or special, time or demand, provisional or final) at any time held and other indebtedness at any time owing by such Lender or any such Affiliate to or for the credit or the account of any Loan Party against any or all of the obligations of the Borrower and the other Loan Parties now or hereafter existing under this Agreement and the other Loan Documents held by such Lender, irrespective of whether or not such Lender shall have made any demand under this Agreement or such other Loan Document for amounts then due and owing and although such obligations may be unmatured; provided, that in the event that any Defaulting Lender shall exercise any such right of setoff, (x) all amounts so set off shall be paid over immediately to the Administrative Agent for further application in accordance with the provisions of Section 2.21 and, pending such payment, shall be segregated by such Defaulting Lender from its other funds and deemed held in trust for the benefit of the Administrative Agent, and the Lenders, and (y) the Defaulting Lender shall provide promptly to the Administrative Agent a statement describing in reasonable detail the Obligations owing to such Defaulting Lender as to which it exercised such right of setoff. Each Lender agrees to notify the Borrower and the Administrative Agent promptly after any such setoff and application; provided that the failure to give such notice shall not affect the validity of such setoff and application. The rights of each Lender under this Section 9.06 are in addition to other rights and remedies (including other rights of setoff) which such Lender may have.

Section 9.07. Governing Law. THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS (EXCEPT, AS TO ANY OTHER LOAN DOCUMENT, AS EXPRESSLY SET FORTH THEREIN) AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HERETO AND THERETO, HEREUNDER AND THEREUNDER, SHALL BE CONSTRUED IN ACCORDANCE WITH, AND GOVERNED BY, THE LAWS OF THE STATE OF NEW YORK (WITHOUT REGARD TO CONFLICT OF LAWS PROVISIONS THAT WOULD RESULT IN THE APPLICATION OF LAWS OTHER THAN THE LAWS OF THE STATE OF NEW YORK).

Section 9.08. Waivers; Amendment.

(a) No failure or delay on the part of any Agent, the Lead Arranger or any Lender in exercising any power or right hereunder or under any other Loan Document shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or power, or any abandonment or discontinuance of steps to enforce such a right or power, preclude any other or further exercise thereof or the exercise of any other right or power. The rights and remedies of the Agents, the Lead Arranger and the Lenders hereunder and under the other Loan Documents are cumulative and are not exclusive of any rights or remedies that they would otherwise have. No waiver of any provision of this Agreement or any other Loan Document or consent to any departure by any Company therefrom shall in any event be effective unless the same shall be permitted by Section 9.08(b), and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. No notice or demand on the Borrower in any case shall entitle the Borrower to any other or further notice or demand in similar or other circumstances.

(b) Neither this Agreement, any other Loan Document nor any provision hereof or thereof may be waived, amended or modified except pursuant to an agreement or agreements in writing entered into by the Companies (to the extent party to the relevant Loan Document) and the Required Lenders (or by the Administrative Agent with the consent of the Required Lenders) and, in the case of an amendment or modification, signed by the Loan Parties party hereto or thereto, and in any case delivered to the Administrative Agent. Notwithstanding the foregoing, no such agreement shall:

(i) forgive or reduce the principal amount or extend the final scheduled date of maturity of any Loan, extend the scheduled date or reduce the amount of any amortization payment in respect of any Loan, reduce any Fee or the stated rate of any repayment premium or interest payable hereunder or forgive the payment of any Fee, repayment premium or interest payable hereunder or extend the scheduled date of any payment thereof, increase the amount or extend the expiration date of any Commitment of any Lender, or amend or modify the pro rata requirements of Section 2.15(c), Section 2.16, Section 7.02, the pro rata requirements of Section 2.05(a) or the definition of the term "Pro Rata Share" in each case without the prior written consent of each Lender directly and adversely affected thereby (such consent being in lieu of the consent of the Required Lenders required pursuant to the first sentence of this Section 9.08(b) other than in the case of an increase in any Commitment, which shall also require the consent of the Required Lenders); provided, however, that only the consent of the Required Lenders shall be necessary (A) to amend the definition of "Default Rate,", (B) to waive any obligation of the Borrower to pay interest at the Default Rate or (C) with respect to any additional extensions of credit pursuant hereto as are approved by the Required Lenders, to include the Lenders advancing such additional funds in the determination of "Pro Rata Share" on substantially the same basis as the Commitments and the Loans funded thereunder.

(ii) amend or modify the provisions of Section 9.04 (including amendments or modifications to the definition of "Eligible Assignee" intended to limit (as opposed to expand) those Persons qualifying thereunder), the provisions of this Section 9.08(b) or the definition of the term "Required Lenders" or "Required Class Lenders" or release all or substantially all of Guarantee obligations of the Subsidiary Guarantors under the Subsidiary Guaranty, in each case without the prior written consent of each Lender (provided, that, with respect to any additional extensions of credit pursuant hereto as are approved by the Required Lenders, the consent of the Required Lenders only shall be required to include the Lenders advancing such additional funds in the determination of "Required Lenders" or "Required Class Lenders" on substantially the same basis as the Commitments and the Loans funded thereunder);

(iii) Intentionally omitted.

(iv) release all or substantially all of the Collateral or any material guarantor of the Obligations in any transaction or series of related transactions (except to the extent such release is contemplated under, and in accordance with, this Agreement or the other Loan Documents and except in connection with a "credit bid" undertaken by the Administrative Agent or the Collateral Agent at the direction of the Required Lenders pursuant to Section 363(k), Section 1129(b)(2)(a)(ii) or otherwise of Title 11 of the United States Code entitled "Bankruptcy," as now and hereafter in effect, or any successor statute or other sale or disposition of assets in connection with an enforcement action with respect to Collateral permitted pursuant to the Loan Documents (in which case only the consent of the Required Lenders will be needed for such release)) without the prior written consent of each Lender;

(v) subject to any other express provisions of this Section 9.08(b), change the provisions of any Loan Document (including any provisions of Section 7.02) in a manner that by its terms treats Lenders holding Loans of one Class in a disproportionate manner than Lenders holding Loans of any other Class without the prior written consent of the Lenders holding a majority of the Loans and unfunded Commitments of such Class (the "Required Class Lenders") of each adversely affected Class (such consent being in lieu of the consent of the Required Lenders required pursuant to first sentence of this Section 9.08(b)) ; provided, that the Aggregate Exposure of any Defaulting Lender with respect to such Class shall be disregarded in determining Required Class Lenders at any time; provided, further, that the Required Class Lenders of any Class

may waive, subject to the agreement of the Borrower, in whole or in part, any prepayment, in which case such prepayment shall not be applied to such Class of Loans but neither the prepayment to any other Class nor the application as among Classes shall be altered;

(vi) amend, modify, supplement or waive any condition precedent set forth in Section 4.01 without the consent of each Lender (such consent being in lieu of the consent of the Required Lenders required pursuant to the first sentence of this Section 9.08(b)) (for the avoidance of doubt, any amendment, modification or waiver of any condition precedent set forth in Section 4.02 to any Borrowing (including the waiver of an existing Event of Default required to be waived in order for such extension of credit to be made) shall require the consent of the Required Lenders (and not the Required Class Lenders with respect to the Class under which such Credit Extension is to be made)); or

(vii) amend, modify, supplement or waive, or permit or consent to the amendment, modification, supplement or waiver of, this Agreement, the Subsidiary Guaranty, any Security Document or any provision hereof or thereof so as to alter the ratable treatment of Obligations arising hereunder or thereunder (it being understood that additional extensions of credit hereunder may share ratably in the payment of Obligations and the Collateral in accordance with the terms of this Agreement (including pursuant to Section 2.14 and Section 7.02 hereof)) or Obligations arising under Specified Hedging Agreements or Specified Cash Management Agreements, the provisions of Section 8.09(a) (as they relate to Obligations under Specified Hedging Agreements or Specified Cash Management Agreements) or the definitions of "Cash Management Agreement," "Hedging Agreement," "Obligations," "Secured Parties," "Specified Cash Management Agreement" or "Specified Hedging Agreement," in each case in a manner adverse to any counterparty of a Loan Party under any Specified Hedging Agreement or Specified Cash Management Agreement with Obligations thereunder then outstanding, without the prior written consent of such counterparty;

provided, further, that no such agreement shall amend, modify or otherwise affect the rights or duties of any Agent or, the Lead Arranger hereunder or under any other Loan Document without the prior written consent of such Agent or such Lead Arranger, as applicable. To the extent the Administrative Agent is entitled or required to make any determinations (whether a consent, waiver or otherwise) under a Disbursement Agreement, the Administrative Agent may make such determinations upon the advice of the Required Lenders. Any waiver by the Administrative Agent or any determination regarding the exercise or enforcement of remedies under a Disbursement Agreement shall be made by the Administrative Agent upon the advice of the Required Lenders. Subject to the provisions of Article VIII and any independent consent rights the Administrative Agent may have pursuant to the last proviso of this clause (b), the Administrative Agent (solely in such capacity) shall enter into such waivers, amendments and modifications to the Loan Documents as directed by the requisite Lenders.

(c) Notwithstanding anything to the contrary in this Section 9.08, the parties to the Fee Letter may (i) enter into written amendments, supplements or modifications thereto for the purpose of adding any provisions thereto or changing in any manner the rights thereunder of the parties thereto or (ii) waive, on such terms and conditions as may be specified in the instrument of waiver, (1) any of the requirements of the Fee Letter or (2) any Default or Event of Default to the extent (and only to the extent) relating to the Fee Letter, it being understood that the waiver of any Default or Event of Default (or portion thereof) relating to any of the other Loan Documents may be accomplished only as set forth in Section 9.08(b).

(d) Subject to the provisions of Article VIII and any independent consent rights the Administrative Agent may have pursuant to the last proviso of clause (b) above, the Administrative Agent or the Collateral Agent may, but shall have no obligation to, with the concurrence of any Lender, execute amendments, modifications, waivers or consents on behalf of such Lender. Any waiver or consent shall be effective only in the specific instance and for the specific purpose for which it was given. No notice to or demand on any Company in any case shall entitle any Company to any other or further notice or demand in similar or other circumstances. Any amendment, modification, termination, waiver or consent effected in accordance with this Section 9.08 shall be binding upon each Secured Party at the time outstanding, each future Secured Party and, if signed by a Company, on such Company.

(e) Notwithstanding anything to the contrary contained in any Loan Document, without the consent of any other Secured Party, the applicable Company(ies) and the Administrative Agent and/or Collateral Agent may (in its or their respective sole discretion, or shall, to the extent required by any Loan Document) enter into (i) any amendments or agreements supplemental to this Agreement or any other Loan Document pursuant to the last sentence of Section 8.02 or (ii) any amendment or waiver of any Loan Document, or enter into any new agreement or instrument, to effect the granting, perfection, protection, expansion or enhancement of any security interest in any Collateral or additional property to become Collateral for the benefit of the Secured Parties, or as required by local law to give effect to, or protect any security interest for the benefit of the Secured Parties, in any property or so that the security interests therein comply with applicable Legal Requirements.

(f) No amendment, modification or waiver of any provision of this Agreement or any other Loan Document or consent to any departure by any Company or any Subsidiary therefrom, shall be made other than by a solicitation of all Lenders, each in their respective capacities as such, in a manner that treats all consenting Lenders (or all consenting Lenders in the relevant affected tranche

whose consent is required by such event) in the same manner, and that requires that any consent fee or other consideration payable to any Lender in its capacity as such in connection therewith be payable ratably to all Lenders (or all Lenders in the relevant affected tranche whose consent is required by such event) who consent to the requested amendment, modification, waiver or consent.

Section 9.09. Interest Rate Limitation. Notwithstanding anything herein to the contrary, if at any time the interest rate applicable to any Loan, together with all Fees, charges and other amounts which are treated as interest on such Loan under applicable law (collectively the "Charges"), shall exceed the maximum lawful rate (the "Maximum Rate") which may be contracted for, charged, taken, received or reserved by the Lender holding such Loan or participation in accordance with applicable law, the rate of interest payable in respect of such Loan or participation hereunder, together with all Charges payable in respect thereof, shall be limited to the Maximum Rate and, to the extent lawful, the interest and Charges that would have been payable in respect of such Loan or participation but were not payable as a result of the operation of this Section 9.09 shall be cumulated and the interest and Charges payable to such Lender in respect of other Loans or participations or periods shall be increased (but not above the Maximum Rate therefor) until such cumulated amount, together with interest thereon at the Federal Funds Effective Rate to the date of repayment, shall have been received by such Lender.

Section 9.10. Entire Agreement. This Agreement, the Fee Letter and the other Loan Documents constitute the entire contract between the parties relative to the subject matter hereof and any other previous agreement among the parties with respect to the subject matter hereof is superseded by this Agreement and the other Loan Documents. Nothing in this Agreement, the Fee Letter or in the other Loan Documents, expressed or implied, is intended to confer upon any Person (other than the parties hereto and thereto, their respective successors and assigns permitted hereunder and, to the extent expressly contemplated hereby, the Related Parties of each of the Agents, the Lead Arranger and the Lenders) any rights, remedies, obligations or liabilities under or by reason of this Agreement or the other Loan Documents.

Section 9.11. WAIVER OF JURY TRIAL . EACH PARTY HERETO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT, ANY OF THE OTHER LOAN DOCUMENTS OR ANY OF THE SPECIFIED HEDGING AGREEMENTS OR SPECIFIED CASH MANAGEMENT AGREEMENT. EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS AND SPECIFIED HEDGING AGREEMENTS AND SPECIFIED CASH MANAGEMENT AGREEMENT TO WHICH IT IS A PARTY BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 9.11.

Section 9.12. Severability. In the event any one or more of the provisions contained in this Agreement or in any other Loan Document should be held invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein and therein shall not in any way be affected or impaired thereby (it being understood that the invalidity of a particular provision in a particular jurisdiction shall not in and of itself affect the validity of such provision in any other jurisdiction). The parties shall endeavor in good-faith negotiations to replace the invalid, illegal or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the invalid, illegal or unenforceable provisions.

Section 9.13. Counterparts. This Agreement may be executed in counterparts (and by different parties hereto on different counterparts), each of which shall be deemed an original but all of which when taken together shall constitute a single contract, and shall become effective as provided in Section 9.03. Delivery of an executed signature page to this Agreement or of a Lender Addendum by facsimile transmission, "pdf" or similar electronic copy shall be as effective as delivery of a manually signed counterpart of this Agreement. Any party hereto may request an original counterpart of any party delivering such electronic counterpart. A set of the copies of this Agreement signed by all the parties shall be lodged with the Borrower and the Administrative Agent.

Section 9.14. Headings. Article and Section headings and the Table of Contents used herein are for convenience of reference only, are not part of this Agreement and are not to affect the construction of, or to be taken into consideration in interpreting, this Agreement.

Section 9.15. Consent to Jurisdiction.

(a) The Borrower hereby irrevocably and unconditionally submits, for itself and its property, to the exclusive jurisdiction of any New York State court or Federal court of the United States of America sitting in New York City, Borough of Manhattan, and any appellate court from any thereof, in any action or proceeding arising out of or relating to this Agreement, the other Loan Documents, the Specified Hedging Agreements or the Specified Cash Management Agreements, or for recognition or enforcement of any judgment, and each of the parties hereto hereby irrevocably and unconditionally agrees that all claims in respect of any such action or

proceeding may be heard and determined in such New York State court or, to the extent permitted by law, in such Federal court; provided that, at the option of the Agents, any of the Agents may commence a suit or action against the Borrower in another New York State court or another Federal court of the United States of America sitting in the State of New York to foreclose the Lien of the Mortgages and the Assignment of Leases and Rents and enforce the Obligations in connection therewith. Each of the parties hereto agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Nothing in this Agreement, however, shall affect any right that any Agent, the Lead Arranger or any Lender may otherwise have to bring any action or proceeding relating to this Agreement, the other Loan Documents, the Specified Hedging Agreements or the Specified Cash Management Agreements against the Borrower or its properties in the courts of any jurisdiction.

(b) The Borrower hereby irrevocably and unconditionally waives, to the fullest extent it may legally and effectively do so, any objection which it may now or hereafter have to the laying of venue of any suit, action or proceeding arising out of or relating to this Agreement, the other Loan Documents, the Specified Hedging Agreements or the Specified Cash Management Agreements or for recognition or enforcement of any judgment in any New York State or Federal court of the United States of America sitting in New York City, Borough of Manhattan or other New York jurisdiction as set forth in clause (a) above. Each of the parties hereto hereby irrevocably and unconditionally waives, to the fullest extent permitted by law, the defense of an inconvenient forum to the maintenance of such suit, action or proceeding in any such court.

(c) Each party to this Agreement irrevocably consents to service of process in the manner provided for notices in Section 9.01. Nothing in this Agreement will affect the right of any party to this Agreement to serve process in any other manner permitted by law.

(d) With respect to any action by the Administrative Agent or the Collateral Agent to enforce the rights and remedies of the Administrative Agent or the Collateral Agent, as applicable, under this Agreement, and the other Loan Documents, each Lender hereby consents to the jurisdiction of the court in which such action is maintained, and agrees to deliver its Notes to the Administrative Agent (who may deliver such Notes to the Collateral Agent) to the extent necessary to enforce the rights and remedies of the Administrative Agent or the Collateral Agent for the benefit of the Lenders under the Mortgages in accordance with the provisions of this Agreement.

Section 9.16. Confidentiality. Each of the Agents, the Lead Arranger and the Lenders agree to maintain the confidentiality of the Information, except that Information may be disclosed (a) (i) to the Lead Arranger, any Agent and any Lender and (ii) to its and its Affiliates' officers, directors, employees, trustees, shareholders, partners, equity holders, managers and agents, including accountants, legal counsel, other advisors and any numbering, administration or settlement service providers (it being understood that the Persons described in this clause (ii) to whom such disclosure is made will be informed of the confidential nature of such Information and required to keep such Information confidential), (b) to the extent requested by any regulatory authority, quasi-regulatory authority (such as the National Association of Insurance Commissioners) or other Governmental Authority, (c) to the extent required by applicable laws or regulations or by any subpoena or similar legal process, (d) in connection with the exercise of any remedies hereunder or under the other Loan Documents or any suit, action or proceeding relating to the enforcement of its rights hereunder or thereunder, (e) subject to an agreement containing provisions substantially the same as those of this Section 9.16, to (i) any actual or prospective assignee of, successor to or participant in any of its rights or obligations under this Agreement or the other Loan Documents, (ii) any pledgee referred to in Section 9.04(e) or (iii) any actual or prospective counterparty (or its advisors) to any swap or derivative transaction relating to the Loan Parties or any of their respective obligations, (f) with the consent of the Borrower, (g) to any rating agency when required by it, provided that, prior to any disclosure, such rating agency shall undertake in writing to preserve the confidentiality of any confidential information relating to the Loan Parties received by it from any of the Lead Arranger, the Agents or the Lenders, (h) to the extent such Information becomes publicly available other than as a result of a breach of this Section 9.16, (i) to the CUSIP Service Bureau or any similar agency in connection with the issuance and monitoring of CUSIP numbers with respect to the Facility, or (j) service providers to the Administrative Agent in connection with the administration, settlement and management of this Agreement and the Loan Documents, or (k) to the extent independently developed by an Agent, the Lead Arranger, any Lender or any of their respective Affiliates. For the purposes of this Section, "Information" shall mean all information received from or on behalf of the Borrower and related to a Company or its business, other than any such information that was available to the Agents, the Lead Arranger or any Lender on a nonconfidential basis prior to its disclosure by the Borrower. Any Person required to maintain the confidentiality of Information as provided in this Section 9.16 shall be considered to have complied with its obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such Information as such Person would accord its own confidential information.

Section 9.17. Acknowledgments. The Borrower hereby acknowledges that:

(a) it has been advised by counsel in the negotiation, execution and delivery of this Agreement and the other Loan Documents;

(b) none of the Lead Arranger, the Agents or the Lenders has any fiduciary relationship with or duty to the Borrower or any

other Company arising out of or in connection with this Agreement or any of the other Loan Documents, and the relationship between the Lead Arranger, the Agents and the Lenders, on one hand, and the Borrower and the other Companies, on the other hand, in connection herewith or therewith, is solely that of debtor and creditor; and

(c) no joint venture is created hereby or by the other Loan Documents or otherwise exists by virtue of the transactions contemplated hereby or thereby among the Lead Arranger, the Agents and the Lenders or among the Borrower, the other Companies and the Lenders. The amounts payable at any time hereunder to each Lender shall be a separate and independent debt, and each Lender shall be entitled to protect and enforce its rights arising out hereof and it shall not be necessary for any other Lender to be joined as an additional party in any proceeding for such purpose.

Section 9.18. Accounting Changes. In the event that any "Accounting Change" (as defined below) shall occur and such change results in a change in the method of calculation of financial covenants, standards or terms in this Agreement, then the parties hereto agree to enter into negotiations in order to amend such provisions of this Agreement so as to equitably reflect such Accounting Changes with the desired result that the criteria for evaluating the Borrower's and the other Companies' financial condition (including the requirements and restrictions associated with the provisions of this Agreement applicable thereto) shall be the same after such Accounting Changes as if such Accounting Changes had not been made. Until such time as such an amendment shall have been executed and delivered by the Borrower, the Administrative Agent and the Required Lenders, all financial covenants, standards and terms in this Agreement shall continue to be calculated or construed as if such Accounting Changes had not occurred. "Accounting Changes" refers to changes in accounting principles required or permitted by the promulgation of any rule, regulation, pronouncement or opinion by the Financial Accounting Standards Board of the American Institute of Certified Public Accountants or, if applicable, the SEC or changes in the application or interpretation of such accounting principles required by the applicable Company's independent auditor (as set forth in an announcement or other interpretation published by such auditors).

Section 9.19. Construction. Each covenant contained herein shall be construed (absent express provision to the contrary) as being independent of each other covenant contained herein, so that compliance with any one covenant shall not (absent such an express contrary provision) be deemed to excuse compliance with any other covenant. Where any provision herein refers to action to be taken by any Person, or which such Person is prohibited from taking, such provision shall be applicable whether such action is taken directly or indirectly by such Person.

Section 9.20. No Third Party Rights. Nothing expressed in or to be implied from this Agreement is intended to give, or shall be construed to give, any Person, other than the parties hereto, the Secured Parties, the Revolving Secured Parties (to the extent provided in Section 2.13(e)), to the extent provided in Section 9.05, each other Indemnitee, and to the extent provided in Section 8.03(b) and Section 9.05, each other Related Party and, in each case, their permitted successors and assigns hereunder, any benefit or legal or equitable right, remedy or claim under or by virtue of this Agreement or under or by virtue of any provision herein.

Section 9.21. Delivery of Lender Addenda. Each initial Lender shall become a party to this Agreement by delivering to the Administrative Agent a Lender Addendum duly executed by such Lender, the Borrower and the Administrative Agent.

Section 9.22. Patriot Act.

(a) Each Lender and the Administrative Agent (for itself and not on behalf of any Lender) hereby notifies the Borrower that pursuant to the requirements of the Patriot Act, it is required to obtain, verify and record information that identifies the Borrower and the other Loan Parties, which information includes the name, address and tax identification number of the Borrower and the other Loan Parties and other information that will allow such Lender or the Administrative Agent, as applicable, to identify the Borrower and the other Loan Parties in accordance with the Patriot Act. The Borrower hereby agrees to share, and to cause the other Loan Parties to share, all such information with the Lenders and the Administrative Agent.

(b) In order for the Administrative Agent to comply with the Patriot Act, prior to any Lender or Participant that is organized under the laws of a jurisdiction outside of the United States of America becoming a party hereto, the Administrative Agent may request, and such Lender or Participant shall provide to the Administrative Agent, its name, address, tax identification number and/or such other identification information as shall be necessary for the Administrative Agent to comply with federal law.

Section 9.23. Reversal of Payments. To the extent any Company makes a payment or payments to the Administrative Agent for the ratable benefit of the Lenders or the Administrative Agent receives any payment or proceeds of the Collateral which payments or proceeds or any part thereof are subsequently invalidated, declared to be fraudulent or preferential, set aside and/or required to be repaid to a trustee, receiver or any other party under any Debtor Relief Law, state or federal law, common law or equitable cause, then, to the extent of such payment or proceeds repaid, the Obligations or part thereof intended to be satisfied shall be revived and continued in full force and effect as if such payment or proceeds had not been received by the Administrative Agent.

Section 9.24. Intentionally Omitted.

Section 9.25. Administrative Agent May File Proofs of Claim. In case of the pendency of any proceeding under any Debtor Relief Law or any other judicial proceeding relative to any Loan Party, the Administrative Agent (irrespective of whether the principal of any Loan shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether the Administrative Agent shall have made any demand on the Borrower) shall be entitled and empowered (but not obligated) by intervention in such proceeding or otherwise:

(a) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Loans and all other Obligations that are owing and unpaid and to file such other documents as may be necessary or advisable in order to have the claims of the Lenders and the Agents (including any claim for the reasonable compensation, expenses, disbursements and advances of the Lenders and the Agents and their respective agents and counsel and all other amounts due the Lenders and the Administrative Agent under Section 2.10, Section 9.05 and the Fee Letter) allowed or allowable in such judicial proceeding; and/or

(b) to collect and receive any monies or other property payable or deliverable on any such claims and to distribute the same;

and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Lender to make such payments to the Administrative Agent and, in the event that the Administrative Agent shall consent to the making of such payments directly to the Lenders to pay to the Administrative Agent any amount due for the reasonable compensation, expenses, disbursements and advances of the Administrative Agent and its agents and counsel, and any other amounts due the Administrative Agent under Section 2.10, Section 9.05 and the Fee Letter.

Section 9.26. Credit Bidding.

(a) The Administrative Agent, on behalf of itself and the Lenders and other Secured Parties, shall have the right at the direction of the Required Lenders to credit bid all or any portion of the Obligations (including accepting some or all of the Collateral in satisfaction of some or all of the Obligations pursuant to a deed in lieu of foreclosure or otherwise) and in such manner purchase (either directly or through one or more acquisition vehicles) all or any portion of the Collateral (x) at any sale thereof conducted under the provisions of Title 11 of the United States Code entitled "Bankruptcy", including under Sections 363, 1123 or 1129 thereof, or any similar laws in any other jurisdictions to which a Loan Party is subject, (y) at any sale thereof conducted by (or with the consent or at the direction of) the Administrative Agent under the provisions of the UCC, including pursuant to Sections 9-610 or 9-620 of the UCC, or (z) at any other sale or foreclosure or acceptance of collateral in lieu of debt conducted by (or with the consent or at the direction of) the Administrative Agent (whether by judicial action or otherwise) in accordance with any applicable law. In connection with any such credit bid and purchase, the Obligations owed to the Secured Parties shall be entitled to be, and shall be, credit bid on a ratable basis (with Obligations with respect to contingent or unliquidated claims receiving contingent interests in the acquired assets on a ratable basis that would vest upon the liquidation of such claims in an amount proportional to the liquidated portion of the contingent claim amount used in allocating the contingent interests) in the asset or assets so purchased (or in the Capital Stock or debt instruments of the acquisition vehicle or vehicles that are used to consummate such purchase). In connection with any such bid, (A) the Administrative Agent shall be authorized to form one or more acquisition vehicles to make a bid, (B) the Administrative Agent shall be authorized to adopt documents providing for the governance of the acquisition vehicle or vehicles (provided that any actions by the Administrative Agent with respect to such acquisition vehicle or vehicles, including any disposition of the assets or Capital Stock thereof shall be governed, directly or indirectly, by the vote of the Required Lenders, irrespective of the termination of this Agreement and without giving effect to the limitations on actions by the Required Lenders contained in clauses (b)(i) through (b)(xi) of Section 9.08 of this Agreement), (iii) the Administrative Agent shall be authorized to assign the relevant Obligations to any such acquisition vehicle pro rata by the Lenders, as a result of which each of the Lenders shall be deemed to have received a pro rata portion of any Capital Stock and/or debt instruments issued by such an acquisition vehicle on account of the assignment of the Obligations to be credit bid, all without the need for any Secured Party or acquisition vehicle to take any further action (and the limitations and requirements set forth in Section 9.04(c) shall not apply to such assignments), and (iv) to the extent that Obligations that are assigned to an acquisition vehicle are not used to acquire Collateral for any reason (as a result of another bid being higher or better, because the amount of Obligations assigned to the acquisition vehicle exceeds the amount of debt credit bid by the acquisition vehicle or otherwise), such Obligations shall automatically be reassigned to the Lenders pro rata and the Capital Stock and/or debt instruments issued by any acquisition vehicle on account of the Obligations that had been assigned to the acquisition vehicle shall automatically be cancelled, without the need for any Secured Party or any acquisition vehicle to take any further action.

(b) Each Lender hereby agrees that, except as otherwise provided in any Loan Document or with the written consent of the Administrative Agent and the Required Lenders, it will not take any enforcement action, accelerate obligations under any Loan Documents, or exercise any right that it might otherwise have under applicable law to credit bid at foreclosure sales, UCC sales or other similar dispositions of Collateral.

Section 9.27. Intentionally Omitted.

Section 9.28. Gaming Authorities. Notwithstanding anything to the contrary set forth in this Agreement or any other Loan

Document, the Agents and the Lenders acknowledge that certain of their respective rights, remedies and powers under this Agreement and the other Loan Documents (including the exercise of remedial rights upon Collateral and voting of equity interests in (or otherwise taking control of) Persons licensed by the Gaming Authorities), may be exercised only to the extent that (i) the exercise thereof does not violate any applicable laws, rules and regulations of the Gaming Authorities, including the Gaming Laws, and (ii) all necessary approvals, licenses, permits, authorizations and consents from the Gaming Authorities required in connection therewith are obtained. Notwithstanding any other provision of this Agreement, the Borrower expressly authorizes the Lead Arranger, the Agents and the Lenders to cooperate with the Gaming Authorities in connection with the administration of their regulatory jurisdiction over the Companies, including the provision of such documents or other information as may be requested by any such Gaming Authorities relating to the Lead Arranger, the Agents, the Lenders, the Companies, or the Loan Documents. The parties acknowledge that the provisions of this Section 9.28 shall not be for the benefit of any Company or any other Person.

Section 9.29. Time is of the Essence. Time is of the essence as to each term or provision of this Agreement and each of the other Loan Documents

Section 9.30. Clarification. Notwithstanding anything to the contrary, the parties hereto understand and agree that Credit Suisse AG, Cayman Islands Branch is acting in various capacities under this Agreement and the other Loan Documents and therefore shall be permitted to fulfill its roles and manage its various duties under this Agreement and the other Loan Documents in such manner as Credit Suisse AG, Cayman Islands Branch sees fit and, for the avoidance of doubt, in lieu of sending notices to itself when acting in different capacities Credit Suisse AG, Cayman Islands Branch may keep internal records regarding all such communications, notices and actions related to this Agreement and the other Loan Documents in accordance with its past practice.

Section 9.31. Acknowledgement and Consent to Bail-In of EEA Financial Institutions. Notwithstanding anything to the contrary in any Loan Document or in any other agreement, arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any EEA Financial Institution arising under any Loan Document, to the extent such liability is unsecured, may be subject to the write-down and conversion powers of an EEA Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:

(a) the application of any Write-Down and Conversion Powers by an EEA Resolution Authority to any such liabilities arising hereunder which may be payable to it by any party hereto that is an EEA Financial Institution; and

(b) the effects of any Bail-in Action on any such liability, including, if applicable:

(i) a reduction in full or in part or cancellation of any such liability;

(ii) a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such EEA Financial Institution, its parent undertaking, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Agreement or any other Loan Document; or

(iii) the variation of the terms of such liability in connection with the exercise of the write-down and conversion powers of any EEA Resolution Authority.

Section 9.32. Hard Cost Contingency. Any item expressly denoted as a "hard cost contingency" in the General Contract or the EV Contract may be used and reallocated in accordance with the terms of the General Contract or the EV Contract, respectively. Any other reallocation of a hard cost contingency Line Item (as defined in either Disbursement Agreement) shall be reallocated solely in accordance with the terms of the Disbursement Agreements and in accordance with the Lien Law of the State of New York and the Section 22 Lien Law Affidavit.

Section 9.33. Modifications to Budget. The Building Budget may be modified from time solely in accordance with the terms of the Building Loan Disbursement Agreement and in accordance with the Lien Law of the State of New York and the Section 22 Lien Law Affidavit.

Section 9.34. Intercreditor Agreement. Without limiting the generality of Article VIII, each Lender acknowledges and agrees that (a) such Lender has received and reviewed a copy of the form of Intercreditor Agreement and copies of any exhibits and schedules thereto, (b) the Administrative Agent and the Collateral Agent are authorized to execute, deliver and perform their obligations under the Intercreditor Agreement on behalf of such Lender, (c) such Lender is and shall be bound (as a Lender) in all respects by the terms and conditions of the Intercreditor Agreement as if a direct signatory party thereto, and (d) in the event of any conflict between the terms of the Intercreditor Agreement and any other Loan Document, the terms of the Intercreditor Agreement shall govern and control.

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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by their respective authorized officers as of the day and year first above written.

MONTREIGN OPERATING COMPANY, LLC,
a New York limited liability company

By: /s/ Joseph A. D'Amato
Name: Joseph A. D'Amato
Title: President

STATE OF _____)
) ss.
COUNTY OF _____)

On the 24th day of January, in the year 2017, before me, the undersigned, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

/s/ Soraya Nadia Attia
Notary Public

CREDIT SUISSE AG, CAYMAN ISLANDS BRANCH,
as Administrative Agent

By: /s/ Robert Hetu
Name: Robert Hetu
Title: Authorized Signatory

By: /s/ Whitney Gaston
Name: Whitney Gaston
Title: Authorized Signatory

STATE OF _____)
) ss.
COUNTY OF _____)

On the 24th day of January, in the year 2017, before me, the undersigned, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

/s/ Marjorie E. Bull
Notary Public

Exhibit 10.44

EXHIBIT A-1
to Credit Agreement

FORM OF TERM A NOTE

$[] Lender's Commitment]**[___,___,___]**
[] Date of Issuance]**[mm/dd/yy]** New York, New York

FOR VALUE RECEIVED, MONTREIGN OPERATING COMPANY, LLC, a New York limited liability company (the "**Borrower**"), promises to pay **[NAME OF LENDER]** ("**Payee**") or its registered assigns the principal amount of [1] **[DOLLARS]** ($**[___,___,___]**) of Term A Loans or such lesser principal amount of Term A Loans as may be outstanding to Payee from time to time under the Credit Agreement in the installments referred to below.

The Borrower also promises to pay interest on the unpaid principal amount hereof, from the date hereof until such principal amount is paid in full, at the rates and at the times which shall be determined in accordance with the provisions of that certain Building Term Loan Agreement, dated as of January 24, 2017 (as amended, amended and restated, supplemented or otherwise modified from time to time, the "**Credit Agreement**"), by and among the Borrower, Credit Suisse AG, Cayman Islands Branch, as administrative agent (in such capacity, together with its successors and assigns acting in such capacity, the "**Administrative Agent**"), and the banks, financial institutions and other entities from time to time party thereto as lenders. Unless otherwise defined herein or the context otherwise requires, capitalized terms used in this Note have the meanings provided in the Credit Agreement.

The Borrower shall make scheduled principal payments on this Note as set forth in Section 2.11 of the Credit Agreement.

This Note is one of the "Notes" under, and is issued pursuant to and entitled to the benefits of, the Credit Agreement, to which reference is hereby made for a more complete statement of the terms and conditions under which the Term A Loans evidenced hereby were or will be made and are to be repaid.

All payments of principal, interest and premium (if any) in respect of this Note shall be made in lawful money of the United States of America in same day funds at the Principal Office of the Administrative Agent or at such other place as shall be designated in writing for such purpose in accordance with the terms of the Credit Agreement. Unless and until an Assignment and Acceptance effecting the assignment or transfer of the obligations evidenced hereby shall have been accepted by the Administrative Agent and recorded in the Register, the Borrower, each Agent and each Lender shall be entitled to deem and treat Payee as the owner and holder of this Note and the obligations evidenced hereby. Payee hereby agrees, by its acceptance hereof, that before disposing of this Note or any part hereof it will make a notation hereon of all principal payments previously made hereunder and of the date to which interest hereon has been paid; provided, the failure to make (or any error in making) a notation of any payment made on this Note shall not limit or otherwise affect the obligations of the Borrower hereunder with respect to payments of principal of or interest on this Note.

Subject to certain prepayment premiums that may apply, this Note is subject to mandatory prepayment and to prepayment at the option of the Borrower, each as provided in the Credit Agreement.

THIS NOTE AND THE RIGHTS AND OBLIGATIONS OF THE BORROWER AND PAYEE HEREUNDER SHALL BE CONSTRUED IN ACCORDANCE WITH, AND GOVERNED BY, THE LAWS OF THE STATE OF NEW YORK (WITHOUT REGARD TO CONFLICT OF LAWS PROVISIONS THAT WOULD RESULT IN THE APPLICATION OF LAWS OTHER THAN THE LAWS OF THE STATE OF NEW YORK).

Upon the occurrence and during the continuation of an Event of Default, the unpaid balance of the principal amount of this Note, together with all accrued and unpaid interest thereon, may become, or may be declared to be, due and payable in the manner, upon the conditions and with the effect provided in the Credit Agreement.

The terms of this Note are subject to amendment only in the manner provided in the Credit Agreement.

No reference herein to the Credit Agreement and no provision of this Note or the Credit Agreement shall alter or impair the obligations of the Borrower, which are absolute and unconditional, to pay the principal of and interest on this Note at the place, at the respective times, and in the currency herein prescribed.

The Borrower promises to pay all documented out-of-pocket costs and expenses, including attorneys' fees, all as provided in the Loan Documents, incurred in the collection and enforcement of this Note. The Borrower and any endorsers of this Note hereby waive diligence, presentment, protest, demand notice of every kind and, to the full extent permitted by law, the right to plead any statute of limitations as a defense to any demand hereunder.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Borrower has caused this Note to be duly executed and delivered by its officer thereunto duly authorized as of the date and at the place first written above.

MONTREIGN OPERATING COMPANY, LLC,
a New York limited liability company

By: _____
Name: _____
Title: _____

TRANSACTIONS ON NOTE

Date	Amount of Loan Made This Date	Amount of Principal Paid This Date	Outstanding Principal Balance This Date	Notation Made By

Exhibit 10.45

EXHIBIT A-2
to Credit Agreement

FORM OF TERM B NOTE

$[] Lender's Commitment]**[___,___,___]**
[] Date of Issuance]**[mm/dd/yy]** New York, New York

FOR VALUE RECEIVED, MONTREIGN OPERATING COMPANY, LLC, a New York limited liability company (the "**Borrower**"), promises to pay **[NAME OF LENDER]** ("**Payee**") or its registered assigns the principal amount of [1] **[DOLLARS]** ($**[___,___,___]**) of Term B Loans or such lesser principal amount of Term B Loans as may be outstanding to Payee from time to time under the Credit Agreement in the installments referred to below.

The Borrower also promises to pay interest on the unpaid principal amount hereof, from the date hereof until such principal amount is paid in full, at the rates and at the times which shall be determined in accordance with the provisions of that certain Building Term Loan Agreement, dated as of January 24, 2017 (as amended, amended and restated, supplemented or otherwise modified from time to time, the "**Credit Agreement**"), by and among the Borrower, Credit Suisse AG, Cayman Islands Branch, as administrative agent (in such capacity, together with its successors and assigns acting in such capacity, the "**Administrative Agent**"), and the banks, financial institutions and other entities from time to time party thereto as lenders. Unless otherwise defined herein or the context otherwise requires, capitalized terms used in this Note have the meanings provided in the Credit Agreement.

The Borrower shall make scheduled principal payments on this Note as set forth in Section 2.11 of the Credit Agreement.

This Note is one of the "Notes" under, and is issued pursuant to and entitled to the benefits of, the Credit Agreement, to which reference is hereby made for a more complete statement of the terms and conditions under which the Term B Loans evidenced hereby were or will be made and are to be repaid.

All payments of principal, interest and premium (if any) in respect of this Note shall be made in lawful money of the United States of America in same day funds at the Principal Office of the Administrative Agent or at such other place as shall be designated in writing for such purpose in accordance with the terms of the Credit Agreement. Unless and until an Assignment and Acceptance effecting the assignment or transfer of the obligations evidenced hereby shall have been accepted by the Administrative Agent and recorded in the Register, the Borrower, each Agent and each Lender shall be entitled to deem and treat Payee as the owner and holder of this Note and the obligations evidenced hereby. Payee hereby agrees, by its acceptance hereof, that before disposing of this Note or any part hereof it will make a notation hereon of all principal payments previously made hereunder and of the date to which interest hereon has been paid; provided, the failure to

make (or any error in making) a notation of any payment made on this Note shall not limit or otherwise affect the obligations of the Borrower hereunder with respect to payments of principal of or interest on this Note.

Subject to certain prepayment premiums that may apply, this Note is subject to mandatory prepayment and to prepayment at the option of the Borrower, each as provided in the Credit Agreement.

THIS NOTE AND THE RIGHTS AND OBLIGATIONS OF THE BORROWER AND PAYEE HEREUNDER SHALL BE CONSTRUED IN ACCORDANCE WITH, AND GOVERNED BY, THE LAWS OF THE STATE OF NEW YORK (WITHOUT REGARD TO CONFLICT OF LAWS PROVISIONS THAT WOULD RESULT IN THE APPLICATION OF LAWS OTHER THAN THE LAWS OF THE STATE OF NEW YORK).

Upon the occurrence and during the continuation of an Event of Default, the unpaid balance of the principal amount of this Note, together with all accrued and unpaid interest thereon, may become, or may be declared to be, due and payable in the manner, upon the conditions and with the effect provided in the Credit Agreement.

The terms of this Note are subject to amendment only in the manner provided in the Credit Agreement.

No reference herein to the Credit Agreement and no provision of this Note or the Credit Agreement shall alter or impair the obligations of the Borrower, which are absolute and unconditional, to pay the principal of and interest on this Note at the place, at the respective times, and in the currency herein prescribed.

The Borrower promises to pay all documented out-of-pocket costs and expenses, including attorneys' fees, all as provided in the Loan Documents, incurred in the collection and enforcement of this Note. The Borrower and any endorsers of this Note hereby waive diligence, presentment, protest, demand notice of every kind and, to the full extent permitted by law, the right to plead any statute of limitations as a defense to any demand hereunder.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Borrower has caused this Note to be duly executed and delivered by its officer thereunto duly authorized as of the date and at the place first written above.

MONTREIGN OPERATING COMPANY, LLC,
a New York limited liability company

By: _____
Name: _____
Title: _____

TRANSACTIONS ON NOTE

Date	Amount of Loan Made This Date	Amount of Principal Paid This Date	Outstanding Principal Balance This Date	Notation Made By

EXHIBIT C-1
to Credit Agreement

FORM OF SUBSIDIARY GUARANTY

This **SUBSIDIARY GUARANTY** (as amended, amended and restated, supplemented, or otherwise modified from time to time, this "**Guaranty**"), dated as of January 24, 2017, is made by Montreign Operating Company, LLC, a New York limited liability company (the "**Borrower**") and each of the other signatories hereto (together with the Borrower, each individually, a "**Guarantor**", and collectively, together with each Additional Guarantor, the "**Guarantors**") in favor of Credit Suisse AG, cayman islands branch, in its capacity as administrative agent (in such capacity, together with its successors and assigns, the "**Administrative Agent**") for the benefit of the Secured Parties.

RECITALS

A. The Borrower has entered into that certain Building Term Loan Agreement, dated as of January 24, 2017 (as amended, amended and restated, supplemented or otherwise modified from time to time, the "**Credit Agreement**"), by and among the Borrower, the banks, financial institutions and other entities from time to time party thereto in the capacity of lenders (the "**Lenders**") and the Administrative Agent.

B. Each Guarantor (other than the Borrower) is a wholly-owned subsidiary of the Borrower, and each Guarantor will receive substantial benefit from the extensions of credit to the Borrower under the Credit Agreement.

C. It is a requirement under the Credit Agreement that the Obligations thereunder be guaranteed by the Guarantors, and the Guarantors are willing to irrevocably and unconditionally guarantee such Obligations.

AGREEMENT

NOW, THEREFORE, based upon the foregoing and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and in order to induce the Secured Parties to make extensions of credit under the Credit Agreement and to enter into the Loan Documents, the Specified Hedging Agreements and the Specified Cash Management Agreements, the Guarantors hereby jointly and severally agree as follows:

SECTION 1. DEFINITIONS

1.1 Certain Defined Terms. As used in this Guaranty, the following terms shall have the following meanings unless the context otherwise requires:

"**Additional Guarantor**" has the meaning given in Section 3.12.

"**Adjusted Maximum Amount**" has the meaning given in Section 2.2(b).

"**Administrative Agent**" is defined in the preamble.

"**Aggregate Payments**" has the meaning given in Section 2.2(b).

"Bankruptcy Code" has the meaning given in Section 2.1.

"**Borrower**" is defined in the recitals.

"**Commodity Exchange Act**" means the Commodity Exchange Act (7 U.S.C. § 1 et seq.), as amended from time to time, and any successor statute.

"**Credit Agreement**" is defined in the recitals.

"**Direct Borrower Obligations**" means, with respect to the Borrower, any Obligation of the Borrower in its capacity as the borrower under the Credit Agreement, grantor under any Security Document, guarantor under this Guaranty or a counterparty obligor with respect to a Specified Hedging Agreement or a Specified Cash Management Agreement.

"**Excluded Swap Obligation**" means, with respect to any Guarantor, (x) as it relates to all or a portion of the Guarantee of such Guarantor, any Swap Obligation if, and to the extent that, such Swap Obligation (or any Guarantee thereof) is or becomes illegal under the Commodity Exchange Act or any rule, regulation or order of the Commodity Futures Trading Commission (or the application or official interpretation of any thereof) by virtue of such Guarantor's failure for any reason to constitute an "eligible contract participant" as defined in the Commodity Exchange Act and the regulations thereunder at the time the Guarantee of such Guarantor would otherwise have become effective or unlawful with respect to such Swap Obligation or (y) as it relates to all or a portion of the grant by such Guarantor of a security interest, any Swap Obligation if, and to the extent that, such Swap Obligation (or such security interest in respect thereof) is or becomes illegal under the Commodity Exchange Act or any rule, regulation or order of the Commodity Futures Trading Commission (or the application or official interpretation of any thereof) by virtue of such Guarantor's failure for any reason to constitute an "eligible contract participant" as defined in the Commodity Exchange Act and the regulations thereunder at the time the security interest of such Guarantor would otherwise have become effective or unlawful with respect to such Swap Obligation. If a Swap Obligation arises under a master agreement governing more than one swap, such exclusion shall apply only to the portion of such Swap Obligation that is attributable to swaps for which such Guarantee or security interest is or becomes illegal or unlawful.

"**Fair Share**" has the meaning given in Section 2.2(b).

"**Fair Share Shortfall**" has the meaning given in Section 2.2(b).

"**Fraudulent Transfer Laws**" has the meaning given in Section 2.2(a).

"**Funding Guarantor**" has the meaning given in Section 2.2(b).

"**Guaranteed Obligations**" has the meaning given in Section 2.1.

"**Guarantor**" is defined in the preamble.

"**Guaranty**" is defined in the preamble.

"**Lenders**" is defined in the recitals.

"**Obligee Guarantor**" has the meaning given in Section 2.7.

"**Qualified ECP Guarantor**" means, in respect of any Swap Obligation, each Guarantor that has total assets exceeding $10,000,000 at the time the relevant Guarantee or grant of the relevant security interest becomes effective with respect to such Swap Obligation or such other Person as constitutes an "eligible contract participant" under the Commodity Exchange Act or any regulations promulgated thereunder and can cause another Person to qualify as an "eligible contract participant" at such time by entering into a keepwell under Section 1a(18)(A)(v)(II) of the Commodity Exchange Act.

"**Swap Obligation**" means, with respect to any Guarantor, any obligation to pay or perform under any agreement, contract or transaction that constitutes a "swap" within the meaning of section 1a(47) of the Commodity Exchange Act.

"Termination Date" means the date on which all Guaranteed Obligations have been "paid in full" as such term is defined in the Credit Agreement.

1.2 Interpretation.

(a) References to "Sections" shall be to Sections of this Guaranty unless otherwise specifically provided.

(b) Unless otherwise defined herein or the context otherwise requires, terms used in this Guaranty, including its preamble and recitals, have the meanings provided in the Credit Agreement.

(c) The rules of construction set forth in Sections 1.02 through 1.08 of the Credit Agreement, including with respect to the meaning of the expressions "payment in full", "paid in full" and any other similar terms or phrases when used with respect to the Guaranteed Obligations, shall be applicable to this Guaranty *mutatis mutandis*.

SECTION 2. THE GUARANTY

2.1 Guaranty of the Guaranteed Obligations. Subject to the provisions of Section 2.2(a), the Guarantors jointly and severally hereby irrevocably and unconditionally guaranty to the Administrative Agent, for the ratable benefit of the Secured Parties, the prompt and complete payment and performance in full of all Guaranteed Obligations when the same shall become due,

whether at stated maturity, by required prepayment, declaration, acceleration, demand or otherwise (including amounts that would become due but for the operation of the automatic stay under Section 362(a) of Title 11 of the United States Code entitled "Bankruptcy" as now and hereafter in effect, or any successor statute (the "**Bankruptcy Code**")). The term "**Guaranteed Obligations**" means:

(a) any and all Obligations of the Borrower, in each case now or hereafter made, incurred or created, whether absolute or contingent, liquidated or unliquidated, whether due or not due, and however arising under or in connection with any Loan Documents, Specified Hedging Agreements or Specified Cash Management Agreements, including those arising under successive borrowing transactions under the Credit Agreement which shall either continue the Obligations of the Borrower or from time to time renew them after they have been satisfied and including interest which, but for the filing of a petition in bankruptcy with respect to the Borrower, would have accrued on any Guaranteed Obligations, whether or not a claim is allowed against the Borrower for such interest in the related bankruptcy proceeding;

(b) any and all Obligations of any other Loan Party, in each case now or hereafter made, incurred or created, whether absolute or contingent, liquidated or unliquidated, whether due or not due, and however arising under or in connection with any Loan Documents, Specified Hedging Agreements or Specified Cash Management Agreements, including those arising under successive borrowing transactions under the Credit Agreement which shall either continue the Obligations of a Loan Party or from time to time renew them after they have been satisfied and including interest which, but for the filing of a petition in bankruptcy with respect to any Loan Party, would have accrued on any Guaranteed Obligations, whether or not a claim is allowed against a Loan Party for such interest in the related bankruptcy proceeding; and

(c) those expenses set forth in Section 2.8.

Notwithstanding any provision hereof or in any other Loan Document to the contrary, (i) in no event will the Guaranteed Obligations include any Excluded Swap Obligations and (ii) the Guaranteed Obligations, as it applies to the Borrower in its capacity as Guarantor hereunder, shall exclude any Direct Borrower Obligations of the Borrower.

2.2 Limitation on Amount Guaranteed; Contribution by Guarantors.

(a) Anything contained in this Guaranty to the contrary notwithstanding, if any Fraudulent Transfer Law is determined by a court of competent jurisdiction to be applicable to the obligations of any Guarantor under this Guaranty, such obligations of such Guarantor hereunder shall be limited to a maximum aggregate amount equal to the largest amount that would not render its obligations hereunder subject to avoidance as a fraudulent transfer or conveyance under Section 548 of the Bankruptcy Code or any applicable provisions of comparable state law (collectively, the "**Fraudulent Transfer Laws**"), in each case after giving effect to all other liabilities of such Guarantor, contingent or otherwise, that are relevant under the Fraudulent Transfer Laws (specifically excluding, however, any liabilities of such Guarantor (i) in respect of intercompany indebtedness to a Loan Party or

other affiliates of a Loan Party to the extent that such indebtedness would be discharged in an amount equal to the amount paid by such Guarantor hereunder and (ii) under any guaranty of other Indebtedness (other than the Subsidiary Guaranty (as defined in the Revolving Credit Agreement)) which guaranty contains a limitation as to maximum amount similar to that set forth in this Section 2.2(a), pursuant to which the liability of such Guarantor hereunder is included in the liabilities taken into account in determining such maximum amount) and after giving effect as assets to the value (as determined under the applicable provisions of the Fraudulent Transfer Laws) of any rights to subrogation, reimbursement, indemnification or contribution of such Guarantor pursuant to applicable law or pursuant to the terms of any agreement (including any such right of contribution under Section 2.2(b)). Each Guarantor acknowledges and agrees that, to the extent not prohibited by applicable law, (i) such Guarantor (as opposed to its creditors, representatives of creditors or bankruptcy trustee, including such Guarantor in its capacity as debtor in possession exercising any powers of a bankruptcy trustee) has no personal right under Fraudulent Transfer Laws to reduce, or request any judicial relief that has the effect of reducing, the amount of its liability under this Guaranty, (ii) such Guarantor (as opposed to its creditors, representatives of creditors or bankruptcy trustee, including such Guarantor in its capacity as debtor in possession exercising any powers of a bankruptcy trustee) has no personal right to enforce the limitation set forth in this Section 2.2(a) or to reduce, or request judicial relief reducing, the amount of its liability under this Guaranty, and (iii) the limitation set forth in this Section 2.2(a) may be enforced only to the extent required under Fraudulent Transfer Laws in order for the obligations of such Guarantor under this Guaranty to be enforceable under Fraudulent Transfer Laws and only by or for the benefit of a creditor, representative of creditors or bankruptcy trustee of such Guarantor or other Person entitled, under such laws, to enforce the provisions thereof.

(b) The Guarantors under this Guaranty together desire to allocate among themselves, in a fair and equitable manner, their obligations arising under this Guaranty. Accordingly, in the event any payment or distribution is made at any time by any Guarantor under this Guaranty (a "**Funding Guarantor**") that exceeds its Fair Share as of such date, that Funding Guarantor shall be entitled to a contribution from each of the other Guarantors in the amount of such other Guarantor's Fair Share Shortfall as of such date, with the result that all such contributions will cause each Guarantor's Aggregate Payments to equal its Fair Share as of such date. "**Fair Share**" means, with respect to a Guarantor as of any date of determination, an amount equal to (i) the ratio of (A) the Adjusted Maximum Amount with respect to such Guarantor to (B) the aggregate of the Adjusted Maximum Amounts with respect to all Guarantors multiplied by (ii) the aggregate amount paid or distributed on or before such date by all Funding Guarantors under this Guaranty in respect of the Guaranteed Obligations. "**Fair Share Shortfall**" means, with respect to a Guarantor as of any date of determination, the excess, if any, of the Fair Share of such Guarantor over the Aggregate Payments of such Guarantor. "**Adjusted Maximum Amount**" means, with respect to a Guarantor as of any date of determination, the maximum aggregate amount of the obligations of such Guarantor under this Guaranty, determined as of such date, in accordance with Section 2.2(a); provided that, solely for purposes of calculating the "Adjusted Maximum Amount" with respect to any Guarantor for purposes of this Section 2.2(b), any assets or liabilities of such

Guarantor arising by virtue of any rights to subrogation, reimbursement or indemnification or any rights to or obligations of contribution hereunder shall not be considered as assets or liabilities of such Guarantor. "**Aggregate Payments**" means, with respect to a Guarantor as of any date of determination, an amount equal to (i) the aggregate amount of all payments and distributions made on or before such date by such Guarantor in respect of this Guaranty (including in respect of this Section 2.2(b)) minus (ii) the aggregate amount of all payments received on or before such date by such Guarantor from the other Guarantors as contributions under this Section 2.2(b). The amounts payable as contributions hereunder shall be determined as of the date on which the related payment or distribution is made by the applicable Funding Guarantor. The allocation among Guarantors of their obligations as set forth in this Section 2.2(b) shall not be construed in any way to limit the liability of any Guarantor hereunder. Any other Guarantor is a third party beneficiary to the contribution agreement set forth in this Section 2.2(b), which shall not be construed in any way to limit the liability of any Guarantor hereunder.

2.3 Payment by Guarantors; Application of Payments. Subject to the provisions of Section 2.2(a), the Guarantors hereby jointly and severally agree, in furtherance of the foregoing and not in limitation of any other right which any Secured Party may have at law or in equity against any Guarantor by virtue hereof, that upon the failure of any Loan Party to pay any of the Guaranteed Obligations when and as the same shall become due, whether at stated maturity, by required prepayment, declaration, acceleration, demand or otherwise (including amounts that would become due but for the operation of the automatic stay under Section 362(a) of the Bankruptcy Code), the Guarantors will upon demand (or automatically upon the occurrence of any Event of Default under Section 7.01(h) or Section 7.01(i) of the Credit Agreement) pay, or cause to be paid, in cash, to the Administrative Agent for the ratable benefit of the Secured Parties, an amount equal to the sum of the unpaid principal amount of all Guaranteed Obligations then due as aforesaid, accrued and unpaid interest on such Guaranteed Obligations (including interest which, but for the filing of a petition in bankruptcy with respect to such Loan Party, would have accrued on such Guaranteed Obligations, whether or not a claim is allowed against such Loan Party for such interest in the related bankruptcy proceeding) and all other Guaranteed Obligations then owed to the Secured Parties as aforesaid. All such payments shall be applied promptly from time to time by the Administrative Agent as set forth in the Credit Agreement. For the avoidance of doubt, notwithstanding any other provision of any Loan Document to the contrary, no such payment received from any Guarantor that is not a Qualified ECP Guarantor shall be applied by the Administrative Agent or any other Secured Party to the payment of any Excluded Swap Obligations.

2.4 Liability of Guarantors Absolute. Each Guarantor agrees that its obligations hereunder are irrevocable, absolute, independent and unconditional and shall not be affected by any circumstance which constitutes a legal or equitable discharge of a guarantor or surety other than payment in full of the Guaranteed Obligations. In furtherance of the foregoing and without limiting the generality thereof, each Guarantor agrees as follows:

(a) This Guaranty is a guaranty of payment when due and not of collectability.

(b) The obligations of each Guarantor hereunder are independent of the obligations of the other Loan Parties hereunder, the Loan Parties under the other Loan Documents, the Specified Hedging Agreements and the Specified Cash Management Agreements and the obligations of any other guarantor (including any other Guarantor) of the obligations of the Loan Parties under the other Loan Documents, the Specified Hedging Agreements and the Specified Cash Management Agreements, and a separate action or actions may be brought and prosecuted against such Guarantor whether or not any action is brought against the applicable Loan Party or any of such other guarantors and whether or not the applicable Loan Party is joined in any such action or actions.

(c) Payment by any Guarantor of a portion, but not all, of the Guaranteed Obligations shall in no way limit, affect, modify or abridge any Guarantor's liability for any portion of the Guaranteed Obligations which has not been paid. Without limiting the generality of the foregoing, if the Administrative Agent is awarded a judgment in any suit brought to enforce any Guarantor's covenant to pay a portion of the Guaranteed Obligations, such judgment shall not be deemed to release such Guarantor from its covenant to pay the portion of the Guaranteed Obligations that is not the subject of such suit, and such judgment shall not, except to the extent satisfied by such Guarantor, limit, affect, modify or abridge any other Guarantor's liability hereunder in respect of the Guaranteed Obligations.

(d) Any Secured Party, upon such terms as it deems appropriate, without notice or demand and without affecting the validity or enforceability of this Guaranty or giving rise to any reduction, limitation, impairment, discharge or termination of any Guarantor's liability hereunder, from time to time may (i) renew, extend, accelerate, increase the rate of principal or interest on, or otherwise change the time, place, manner or terms of payment of the Guaranteed Obligations; (ii) settle, compromise, release or discharge, or accept or refuse any offer of performance with respect to, or substitutions for, the Guaranteed Obligations or any agreement relating thereto and/or subordinate the payment of the same to the payment of any other obligations; (iii) request and accept other guaranties of the Guaranteed Obligations and take and hold security for the payment of this Guaranty or the Guaranteed Obligations; (iv) release, surrender, exchange, substitute, compromise, settle, rescind, waive, alter, subordinate or modify, with or without consideration, any security for payment of the Guaranteed Obligations, any other guaranties of the Guaranteed Obligations, or any other obligation of any Person (including any other Guarantor) with respect to the Guaranteed Obligations; (v) enforce and apply any security now or hereafter held by or for the benefit of such Secured Party in respect of this Guaranty or the Guaranteed Obligations and direct the order or manner of sale thereof, or exercise any other right or remedy that such Secured Party may have against any such security, in each case as such Secured Party in its discretion may determine consistent with the Loan Documents, the applicable Specified Hedging Agreement or the applicable Specified Cash Management Agreement and any applicable security agreement, including foreclosure on any such security pursuant to one or more judicial or nonjudicial sales, whether or not every aspect of any such sale is commercially reasonable, and even though such action operates to impair or extinguish any right of reimbursement or subrogation or other right or remedy of any Guarantor against any Loan Party or any security for the Guaranteed Obligations; and (vi) exercise any other rights available to it under the Loan Documents, the Specified Hedging Agreements or the Specified Cash Management Agreements.

(e) This Guaranty and the obligations of the Guarantors hereunder shall be valid and enforceable and shall not be subject to any reduction, limitation, impairment, discharge or termination for any reason (other than payment in full of the Guaranteed Obligations), including the occurrence of any of the following, whether or not any Guarantor shall have had notice or knowledge of any of them: (i) any failure or omission to assert or enforce, or agreement or election not to assert or enforce, or the stay or enjoining, by order of court, by operation of law or otherwise, of the exercise or enforcement of, any claim or demand or any right, power or remedy (whether arising under the Loan Documents, the Specified Hedging Agreements, the Specified Cash Management Agreements, at law, in equity or otherwise) with respect to the Guaranteed Obligations or any agreement relating thereto, or with respect to any other guaranty of or security for the payment of the Guaranteed Obligations; (ii) any rescission, waiver, amendment or modification of, or any consent to or departure from, any of the terms or provisions (including provisions relating to events of default) of any of the Loan Documents, any of the Specified Hedging Agreements, any of the Specified Cash Management Agreements or any agreement or instrument executed pursuant thereto, or of any other guaranty or security for the Guaranteed Obligations, in each case whether or not in accordance with the terms of such Loan Document, such Specified Hedging Agreement, such Specified Cash Management Agreements or any agreement or instrument executed pursuant thereto or any agreement relating to such other guaranty or security; (iii) the Guaranteed Obligations, or any agreement relating thereto, at any time being found to be illegal, invalid or unenforceable in any respect; (iv) the application of payments received from any source (other than payments received pursuant to the Loan Documents or from the proceeds of any security for the Guaranteed Obligations, except to the extent such security also serves as collateral for indebtedness other than the Guaranteed Obligations) to the payment of indebtedness other than the Guaranteed Obligations, even though any Secured Party might have elected to apply such payment to any part or all of the Guaranteed Obligations; (v) any Secured Party's consent to the change, reorganization or termination of the corporate structure or existence of any Loan Party or any of their respective Subsidiaries and to any corresponding restructuring of the Guaranteed Obligations; (vi) any failure to perfect or continue perfection of a security interest in any collateral which secures any of the Guaranteed Obligations; (vii) any defenses, set-offs or counterclaims which any Loan Party may allege or assert against any Secured Party in respect of the Guaranteed Obligations (other than, subject to Section 2.13(c), the full payment in cash thereof), including failure of consideration, breach of warranty, statute of frauds, statute of limitations, accord and satisfaction and usury; and (viii) any other act or thing or omission, or delay to do any other act or thing, which may or might in any manner or to any extent vary the risk of any Guarantor as an obligor in respect of the Guaranteed Obligations.

2.5 Waivers by Guarantors. Each Guarantor hereby waives, for the benefit of the Secured Parties, to the extent permitted by applicable law:

(a) any right to require any Secured Party, as a condition of payment or performance by such Guarantor, to (i) proceed against any Loan Party, any other guarantor (including any other Guarantor) of the Guaranteed Obligations or any other Person, (ii) proceed against or exhaust any security held from any Loan Party, any such other guarantor or any other Person, (iii) proceed against or have resort to any balance of any deposit account or credit on the books of any Secured Party in favor of any Loan Party, any

such other guarantor or any other Person, or (iv) pursue any other remedy in the power of any Secured Party whatsoever;

(b) any defense arising by reason of the incapacity, lack of authority or any disability or other defense of any Loan Party including any defense based on or arising out of the lack of validity or the unenforceability of the Guaranteed Obligations or any agreement or instrument relating thereto or by reason of the cessation of the liability of any Loan Party from any cause other than payment in full of the Guaranteed Obligations;

(c) any defense based upon any statute or rule of law which provides that the obligation of a surety must be neither larger in amount nor in other respects more burdensome than that of the principal;

(d) any defense based upon any Secured Party's errors or omissions in the administration of the Guaranteed Obligations, except behavior which amounts to bad faith or willful misconduct;

(e) (i) any principles or provisions of law, statutory or otherwise, which are or might be in conflict with the terms of this Guaranty and any legal or equitable discharge of such Guarantor's obligations hereunder, (ii) the benefit of any statute of limitations affecting such Guarantor's liability hereunder or the enforcement hereof, (iii) any rights to set-offs, recoupments and counterclaims, and (iv) promptness, diligence and any requirement that any Secured Party protect, secure, perfect or insure any security interest or lien or any property subject thereto;

(f) notices, demands, presentments, protests, notices of protest, notices of dishonor and notices of any action or inaction, including acceptance of this Guaranty, notices of default under the Loan Documents, the Specified Hedging Agreements, the Specified Cash Management Agreements or any agreement or instrument related thereto, notices of any renewal, extension or modification of the Guaranteed Obligations or any agreement related thereto, notices of any extension of credit to any Loan Party and notices of any of the matters referred to in Section 2.4 and any right to consent to any thereof;

(g) any defenses (other than the defense of payment) or benefits that may be derived from or afforded by law which limit the liability of or exonerate guarantors or sureties, or which may conflict with the terms of this Guaranty;

(h) any defense based upon any Secured Party's failure to mitigate damages; and

(i) all rights to insist upon, plead or in any manner claim or take the benefit or advantage of any appraisal, valuation, stay, extension, marshaling of assets, redemption or similar law, or exemption, whether now or hereafter in force, which may delay, prevent or otherwise affect the performance by any Guarantor of its obligations under, or the enforcement by any Secured Party of, this Guaranty.

2.6 Guarantors' Rights of Subrogation, Contribution, Etc. Each Guarantor hereby waives the right to exercise at any time prior to the Termination Date any claim, right or remedy,

direct or indirect, that such Guarantor now has or may hereafter have against any Loan Party or any of its assets in connection with this Guaranty or the performance by such Guarantor of its obligations hereunder, in each case whether such claim, right or remedy arises in equity, under contract, by statute, under common law or otherwise and including (a) any right of subrogation, reimbursement or indemnification that such Guarantor now has or may hereafter have against any Loan Party; (b) any right to enforce, or to participate in, any claim, right or remedy that any Secured Party now has or may hereafter have against any Loan Party; and (c) any benefit of, and any right to participate in, any collateral or security now or hereafter held by any Secured Party. In addition, until the Termination Date, each Guarantor shall withhold exercise of any right of contribution such Guarantor may have against any other guarantor (including any other Guarantor) of the Guaranteed Obligations (including any such right of contribution under Section 2.2(b)). The foregoing agreements of the Guarantors set forth in this Section 2.6 shall remain operative and in full force and effect until the Termination Date regardless of the termination of this Guaranty. Each Guarantor further agrees that, to the extent the waiver or agreement to withhold the exercise of its rights of subrogation, reimbursement, indemnification and contribution as set forth herein is found by a court of competent jurisdiction to be void or voidable for any reason, any rights of subrogation, reimbursement or indemnification such Guarantor may have against any Loan Party or against any collateral or security, and any rights of contribution such Guarantor may have against any such other guarantor, shall be junior and subordinate to any rights any Secured Party may have against any Loan Party, to all right, title and interest any Secured Party may have in any such collateral or security, and to any right any Secured Party may have against such other guarantor. If any amount shall be paid to any Guarantor on account of any such subrogation, reimbursement, indemnification or contribution rights at any time prior to the Termination Date, such amount shall be held in trust for the Administrative Agent on behalf of the Secured Parties and shall forthwith be paid over to the Administrative Agent for the benefit of the Secured Parties to be credited and applied against the Guaranteed Obligations, whether matured or unmatured, in accordance with the terms hereof.

2.7 Subordination of Other Obligations. Any Indebtedness of any Guarantor now or hereafter held by any other Guarantor (the "**Obligee Guarantor**") is hereby subordinated in right of payment to the Guaranteed Obligations during the term of this Guaranty, and any such Indebtedness collected or received by the Obligee Guarantor after an Event of Default has occurred and is continuing shall be held in trust for the Administrative Agent on behalf of the Secured Parties and shall forthwith be paid over to the Administrative Agent for the benefit of the Secured Parties to be credited and applied against the Guaranteed Obligations but without affecting, impairing or limiting in any manner the liability of the Obligee Guarantor under any other provision of this Guaranty.

2.8 Expenses. The Guarantors jointly and severally agree to pay, or cause to be paid, on demand, and to save the Secured Parties harmless against liability for, any and all documented costs and expenses (including fees, disbursements and other charges of counsel) incurred or expended by any Secured Party in connection with the enforcement of or preservation of any rights under this Guaranty, all in accordance with the terms of Section 9.05 of the Credit Agreement, the provisions of which are incorporated herein, *mutatis mutandis*.

2.9 Continuing Guaranty. This Guaranty is a continuing guaranty and shall remain in effect until the Termination Date; provided that, as to any Guarantor, this Guaranty may be terminated prior to the Termination Date pursuant to Section 2.16. Each Guarantor hereby irrevocably waives any right to revoke this Guaranty as to future transactions giving rise to any Guaranteed Obligations.

2.10 Authority of Guarantors. It is not necessary for any Secured Party to inquire into the capacity or powers of any Guarantor or any other Loan Party or the officers, directors or any agents acting or purporting to act on behalf of any of them.

2.11 Financial Condition of Loan Parties. Any Loans or other extensions of credit may be granted to the Loan Parties or continued from time to time, and any Specified Hedging Agreements or Specified Cash Management Agreements may be entered into from time to time, in each case without notice to or authorization from any Guarantor regardless of the financial or other condition of the applicable Loan Party at the time of any such grant or continuation or at the time such Specified Hedging Agreement or Specified Cash Management Agreement is entered into, as the case may be. No Secured Party shall have any obligation to disclose or discuss with any Guarantor its assessment, or any Guarantor's assessment, of the financial condition of any Loan Party. Each Guarantor has adequate means to obtain information from each Loan Party on a continuing basis concerning the financial condition of each Loan Party and their respective ability to perform its obligations under the Loan Documents, Specified Hedging Agreements and Specified Cash Management Agreements, and each Guarantor assumes the responsibility for being and keeping informed of the financial condition of each Loan Party and of all circumstances bearing upon the risk of nonpayment of the Guaranteed Obligations. Each Guarantor hereby waives and relinquishes any duty on the part of any Secured Party to disclose any matter, fact or thing relating to the business, operations or conditions of any Loan Party now known or hereafter known by any Secured Party.

2.12 Rights Cumulative. The rights, powers and remedies given to the Secured Parties by this Guaranty are cumulative and shall be in addition to and independent of all rights, powers and remedies given to the Secured Parties by virtue of any statute or rule of law or in any of the other Loan Documents, any of the Specified Hedging Agreements, any of the Specified Cash Management Agreements, or any agreement between any Guarantor and any Secured Party or Secured Parties or between any Loan Party and any Secured Party or Secured Parties. Any forbearance or failure to exercise, and any delay by any Secured Party in exercising, any right, power or remedy hereunder shall not impair any such right, power or remedy or be construed to be a waiver thereof, nor shall it preclude the further exercise of any such right, power or remedy.

2.13 Bankruptcy; Post-Petition Interest; Reinstatement of Guaranty.

(a) So long as any Guaranteed Obligations have not been paid in full, no Guarantor shall, without the prior written consent of the Administrative Agent acting pursuant to the instructions of the Required Lenders, commence or join with any other Person in commencing any bankruptcy, reorganization, insolvency or similar proceedings under Debtor Relief Laws against any Loan Party. The obligations of the Guarantors under this Guaranty shall not be reduced, limited, impaired, discharged, deferred, suspended or terminated by any proceeding, voluntary or involuntary, involving the bankruptcy,

insolvency, receivership, reorganization, liquidation, arrangement or similar proceedings under Debtor Relief Laws of any Loan Party or by any defense which any Loan Party may have by reason of the order, decree or decision of any court or administrative body resulting from any such proceeding.

(b) Each Guarantor acknowledges and agrees that any interest on any portion of the Guaranteed Obligations which accrues after the commencement of any proceeding referred to in clause (a) above (or, if interest on any portion of the Guaranteed Obligations ceases to accrue by operation of law by reason of the commencement of said proceeding, such interest as would have accrued on such portion of the Guaranteed Obligations if said proceedings had not been commenced) shall be included in the Guaranteed Obligations because it is the intention of the Guarantors and the Secured Parties that the Guaranteed Obligations should be determined without regard to any rule of law or order which may relieve any Loan Party of any portion of such Guaranteed Obligations. The Guarantors will permit any trustee in bankruptcy, receiver, debtor in possession, assignee for the benefit of creditors or similar person under Debtor Relief Laws to pay the Administrative Agent, or allow the claim of the Administrative Agent in respect of, any such interest accruing after the date on which such proceeding is commenced.

(c) In the event that all or any portion of the Guaranteed Obligations are paid by the Borrower or any other Loan Party, the obligations of the Guarantors hereunder shall continue and remain in full force and effect or be reinstated, as the case may be, in the event that all or any part of such payment(s) are rescinded or recovered directly or indirectly from any Secured Party as a preference, fraudulent transfer or otherwise, and any such payments which are so rescinded or recovered shall constitute Guaranteed Obligations for all purposes under this Guaranty.

2.14 Notice of Events. Promptly upon any Guarantor obtaining knowledge thereof, such Guarantor shall give the Administrative Agent written notice of any condition or event which has resulted in (a) a material adverse change in the financial condition of any Guarantor or (b) a Default or Event of Default under the Credit Agreement.

2.15 Set Off. In addition to any other rights any Secured Party may have under law or in equity, if any amount shall at any time be due and owing by any Guarantor to any Secured Party under this Guaranty, such Secured Party is authorized at any time or from time to time, without notice (any such notice being hereby expressly waived), to set off and to appropriate and to apply any and all deposits (general or special, including indebtedness evidenced by certificates of deposit, whether matured or unmatured and any other indebtedness of such Secured Party owing to such Guarantor) and any other property of such Guarantor held by any Secured Party to or for the credit or the account of such Guarantor against and on account of the Guaranteed Obligations and liabilities of such Guarantor to any Secured Party under this Guaranty; provided, in the event that any Defaulting Lender shall exercise any such right of setoff, (x) all amounts so set off shall be paid over immediately to the Administrative Agent for further application in accordance with the provisions of Section 2.21 of the Credit Agreement and, pending such payment, shall be segregated by such Defaulting Lender from its other funds and deemed held in trust for the benefit of the Administrative Agent and the Lenders, and (y) the Defaulting Lender shall provide promptly to the Administrative Agent a statement describing in reasonable detail the Obligations owing to such

Defaulting Lender as to which it exercised such right of setoff. Each Secured Party agrees to notify the Borrower and the Administrative Agent promptly after any such setoff and application (although the failure to provide any such notice shall not affect any such setoff or result in any liability to such Secured Party).

2.16 Discharge of Guaranty Upon Sale of Guarantor. If (a) all of the ownership interests of any Guarantor or any of its successors in interest under this Guaranty shall be sold or otherwise disposed of (including by merger or consolidation) in an Asset Sale permitted under the Credit Agreement (other than a sale to the Borrower or any other Loan Party), or (b) any Guarantor shall otherwise be released from this Guaranty in accordance with the Loan Documents or with the consent of the Lenders pursuant to Section 9.08 of the Credit Agreement, the Guaranty of such Guarantor or such successor in interest, as the case may be, hereunder shall automatically be discharged and released without any further action by any Secured Party or any other Person effective as of the time of such Asset Sale or other release.

2.17 Representations and Warranties. Each Guarantor acknowledges and agrees that it is familiar with the Credit Agreement and the representations and warranties applicable to it thereunder. The representations and warranties contained in Article 3 of the Credit Agreement, insofar as the representations and warranties contained therein are applicable to any Guarantor and its properties, are true and correct in all material respects (or, to the extent a representation and warranty contains a materiality or Material Adverse Effect qualification, in all respects), and shall be true and correct in all material respects (or, to the extent a representation and warranty contains a materiality or Material Adverse Effect qualification, in all respects) on each day on which such representations and warranties will be repeated in accordance with the Loan Documents (except to the extent they relate to any earlier date in which case they shall be true and correct in all material respects (or, to the extent a representation and warranty contains a materiality or Material Adverse Effect qualification, in all respects) as of such earlier date), each representation and warranty set forth in Article 3 of the Credit Agreement (insofar as applicable as aforesaid) and all other terms of the Credit Agreement to which reference is made therein, together with all related definitions and ancillary provisions, being hereby incorporated into this Guaranty by this reference as though specifically set forth in this Section 2.17.

2.18 Covenants. Each Guarantor acknowledges and agrees that it is familiar with the Credit Agreement and the covenants applicable to it thereunder. Each Guarantor covenants and agrees that, at all times prior to the Termination Date, it will perform, comply with and be bound by all of the agreements, covenants and obligations contained in Articles 5 and 6 of the Credit Agreement, which are applicable to such Guarantor, each such agreement, covenant and obligation contained in Articles 5 and 6 of the Credit Agreement, together with all related definitions and ancillary provisions, being hereby incorporated into this Guaranty by this reference as though specifically set forth in this Section 2.18.

SECTION 3. MISCELLANEOUS

3.1 Survival of Warranties. All agreements, representations and warranties made herein shall survive the execution and delivery of this Guaranty and the other Loan Documents and any increase in the Commitments under the Credit Agreement.

3.2 Notices. Any communications between the Administrative Agent and any Guarantor and any notices or requests provided herein to be given may be given in accordance with Section 9.01 of the Credit Agreement, to each party hereto at its address set forth in the Credit Agreement, on the signature pages hereof or to such other addresses as each such party may in writing hereafter indicate. Any notice, request or demand to or upon the Administrative Agent or any Guarantor shall not be effective until received.

3.3 Severability. In case any provision in or obligation under this Guaranty shall be invalid, illegal or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations, or of such provision or obligation in any other jurisdiction, shall not in any way be affected or impaired thereby.

3.4 Amendments and Waivers. Subject to the last sentence of Section 8.02 of the Credit Agreement, no amendment, modification, termination or waiver of any provision of this Guaranty, and no consent to any departure by any Guarantor therefrom, shall in any event be effective without the written concurrence of (i) the Required Lenders or (ii) the Administrative Agent (at the direction of the Required Lenders) and, in the case of any such amendment or modification, each Guarantor. Any such waiver or consent shall be effective only in the specific instance and for the specific purpose for which it was given.

3.5 Headings. Section headings in this Guaranty are included herein for convenience of reference only and shall not constitute a part of this Guaranty for any other purpose or be given any substantive effect.

3.6 Applicable Law; Rules of Construction. THIS GUARANTY AND THE RIGHTS AND OBLIGATIONS OF THE GUARANTORS AND THE SECURED PARTIES HEREUNDER SHALL BE CONSTRUED IN ACCORDANCE WITH, AND GOVERNED BY, THE LAWS OF THE STATE OF NEW YORK (WITHOUT REGARD TO CONFLICT OF LAWS PROVISIONS THAT WOULD RESULT IN THE APPLICATION OF LAWS OTHER THAN THE LAWS OF THE STATE OF NEW YORK).

3.7 Successors and Assigns. This Guaranty is a continuing guaranty and shall be binding upon each Guarantor and its respective successors and assigns. This Guaranty shall inure to the benefit of the Secured Parties and their respective successors and assigns. No Guarantor shall assign this Guaranty or any of the rights or obligations of such Guarantor hereunder without the prior written consent of the Administrative Agent (acting with the consent of the requisite percentage of Lenders pursuant to the Credit Agreement). Any Secured Party may, without notice or consent, assign its interest in this Guaranty in whole or in part, provided that any assignee shall be a Secured Party under the Credit Agreement. The terms and provisions of this Guaranty shall inure to the

benefit of any transferee or assignee of any Commitments or Loan, and in the event of such transfer or assignment the rights and privileges herein conferred upon such Secured Party shall automatically extend to and be vested in such transferee or assignee, all subject to the terms and conditions hereof.

3.8 Consent to Jurisdiction.

(a) Each Guarantor hereby irrevocably and unconditionally submits, for itself and its property, to the exclusive jurisdiction of any New York State court or Federal court of the United States of America sitting in New York City, Borough of Manhattan, and any appellate court from any thereof, in any action or proceeding arising out of or relating to this Guaranty, the other Loan Documents, the Specified Hedging Agreements or the Specified Cash Management Agreements or for recognition or enforcement of any judgment, and each Guarantor hereby irrevocably and unconditionally agrees that all claims in respect of any such action or proceeding shall be heard and determined in such New York State court or, to the extent permitted by law, in such Federal court. Each Guarantor agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Nothing in this Guaranty, however, shall affect any right that any Secured Party may otherwise have to bring any action or proceeding relating to this Guaranty, the other Loan Documents. the Specified Hedging Agreements or the Specified Cash Management Agreements against any Guarantor or their properties in the courts of any jurisdiction.

(b) Each Guarantor hereby irrevocably and unconditionally waives, to the fullest extent it may legally and effectively do so, any objection which it may now or hereafter have to the laying of venue of any action or proceeding arising out of or relating to this Guaranty, the other Loan Documents, the Specified Hedging Agreements or the Specified Cash Management Agreements or for recognition or enforcement of any judgment in any New York State court or Federal court of the United States of America sitting in New York City, Borough of Manhattan or other New York jurisdiction as set forth in clause (a) above. Each Guarantor hereby irrevocably and unconditionally waives, to the fullest extent permitted by law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court.

(c) Each Guarantor irrevocably consents to service of process in the manner provided for notices in Section 3.2. Nothing in this Guaranty will affect the right of any party to this Guaranty to serve process in any other manner permitted by law.

(d) Each Guarantor shall maintain an agent to receive service of process in New York, New York at all times until the Termination Date.

3.9 Waiver of Jury Trial. EACH GUARANTOR HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS GUARANTY, THE OTHER LOAN DOCUMENTS, THE SPECIFIED HEDGING AGREEMENTS OR THE SPECIFIED CASH MANAGEMENT AGREEMENTS. EACH GUARANTOR (A)

CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY SECURED PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH SECURED PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT THE SECURED PARTIES HAVE BEEN INDUCED TO ENTER INTO THE LOAN DOCUMENTS, THE SPECIFIED HEDGING AGREEMENTS AND THE SPECIFIED CASH MANAGEMENT AGREEMENTS TO WHICH THEY ARE A PARTY, BY, AMONG OTHER THINGS, THE WAIVERS AND CERTIFICATIONS IN THIS SECTION 3.9.

3.10 No Other Writing. This writing is intended by the Guarantors and the Secured Parties as the final expression of this Guaranty and is also intended as a complete and exclusive statement of the terms of their agreement with respect to the matters covered hereby. No course of dealing, course of performance or trade usage, and no parol evidence of any nature, shall be used to supplement or modify any terms of this Guaranty. There are no conditions to the full effectiveness of this Guaranty.

3.11 Further Assurances. At any time or from time to time, upon the request of the Administrative Agent, each Guarantor shall execute and deliver such further documents and do such other acts and things as the Administrative Agent may reasonably request in order to effect fully the purposes of this Guaranty.

3.12 Additional Guarantors. From time to time subsequent to the date hereof, additional Subsidiaries of the Borrower may become parties hereto, as additional Guarantors (each an "**Additional Guarantor**"), by executing a joinder agreement to this Guaranty in the form of Exhibit A attached hereto. Upon delivery of any such counterpart to the Administrative Agent, notice of which is hereby waived by each Guarantor, each such Additional Guarantor shall be a Guarantor and shall be as fully a party hereto as if such Additional Guarantor were an original signatory hereof. Each Guarantor expressly agrees that its obligations arising hereunder shall not be affected or diminished by the addition or release of any other Guarantor hereunder, nor by any election of the Administrative Agent not to cause any Subsidiary of the Borrower to become an Additional Guarantor hereunder. This Guaranty shall be fully effective as to any Guarantor that is or becomes a party hereto regardless of whether any other Person becomes or fails to become or ceases to be a Guarantor hereunder.

3.13 Counterparts; Effectiveness. This Guaranty may be executed in counterparts (and by different parties hereto on different counterparts), each of which shall be deemed an original but all of which when taken together shall constitute a single contract. Delivery of an executed signature page to this Guaranty by facsimile transmission, "pdf" or similar electronic copy shall be as effective as delivery of a manually signed counterpart of this Guaranty. Any party hereto may request an original counterpart of any party delivering such electronic counterpart. A set of the copies of this Guaranty signed by all the parties shall be lodged with the Borrower and the Administrative Agent. This Guaranty shall become effective as to each Guarantor upon the execution of a counterpart hereof by such Guarantor (whether or not a counterpart hereof shall have been executed by any other Guarantor) and receipt by the Administrative Agent of written or telephonic notification of such execution and authorization of delivery thereof.

3.14 Administrative Agent as Agent.

(a) The Administrative Agent has been appointed to act as Administrative Agent hereunder by the Secured Parties. The Administrative Agent shall be obligated, and shall have the right hereunder, to make demands, to give notices, to exercise or refrain from exercising any rights, and to take or refrain from taking any action, solely in accordance with this Guaranty and the Loan Documents; provided that the Administrative Agent shall exercise, or refrain from exercising, any remedies hereunder in accordance with the instructions of the Required Lenders. In furtherance of the foregoing provisions of this Section 3.14, each Secured Party, by its acceptance of the benefits hereof, agrees that, except to the extent specifically provided herein, it shall have no right individually to enforce this Guaranty, it being understood and agreed by such that all rights and remedies hereunder may be exercised solely by the Administrative Agent for the benefit of the Secured Parties in accordance with the terms of this Section 3.14.

(b) The Administrative Agent shall at all times be the same Person that is the Administrative Agent under the Credit Agreement. Written notice of resignation by the Administrative Agent pursuant to the terms of the Credit Agreement shall also constitute notice of resignation as the Administrative Agent under this Guaranty; removal of the Administrative Agent pursuant to the terms of the Credit Agreement shall also constitute removal as the Administrative Agent under this Guaranty; and appointment of a successor Administrative Agent pursuant to the terms of the Credit Agreement shall also constitute appointment of a successor Administrative Agent under this Guaranty. Upon the acceptance of any appointment as the Administrative Agent under the terms of the Credit Agreement by a successor Administrative Agent, that successor Administrative Agent shall thereupon succeed to and become vested with all the rights, powers, privileges and duties of the retiring or removed Administrative Agent under this Guaranty, and the retiring or removed Administrative Agent under this Guaranty shall promptly (i) transfer to such successor Administrative Agent all sums held hereunder, together with all records and other documents necessary or appropriate in connection with the performance of the duties of the successor Administrative Agent under this Guaranty, and (ii) take such other actions as may be necessary or appropriate in connection with the assignment to such successor Administrative Agent of the rights created hereunder, whereupon such retiring or removed Administrative Agent shall be discharged from its duties and obligations under this Guaranty. After any retiring or removed Administrative Agent's resignation or removal hereunder as the Administrative Agent, the provisions of this Guaranty shall inure to its benefit as to any actions taken or omitted to be taken by it under this Guaranty while it was the Administrative Agent hereunder.

3.15 Gaming Authorities. The Administrative Agent acknowledges and agrees that its rights, remedies and powers under this Guaranty may be exercised only to the extent that (i) the exercise thereof does not violate any applicable laws, rules and regulations of the Gaming Authorities, including Gaming Laws, and (ii) all necessary approvals, licenses and consents from the Gaming Authorities required in connection therewith are obtained. Notwithstanding any other provision of this Guaranty, the Guarantors expressly authorize the Administrative Agent to cooperate with the applicable Gaming Authorities in connection with the administration of their regulatory

jurisdiction over the Guarantors, including, without limitation, the provision of such documents or other information as may be requested by any such Gaming Authorities relating to the Administrative Agent, any Guarantor, or the Loan Documents. The parties acknowledge that the provisions of this Section 3.15 shall not be for the benefit of the Guarantors or any other Person.

3.16 Keepwell. Each Qualified ECP Guarantor hereby jointly and severally absolutely, unconditionally and irrevocably undertakes to provide such funds or other support as may be needed from time to time by each other Guarantor to honor all of its obligations under this Guaranty in respect of Swap Obligations (provided, however, that each Qualified ECP Guarantor shall only be liable under this Section 3.16 for the maximum amount of such liability that can be hereby incurred without rendering its obligations under this Section 3.16, or otherwise under this Guaranty, voidable under applicable law relating to fraudulent conveyance or fraudulent transfer, and not for any greater amount). The obligations of each Qualified ECP Guarantor under this Section shall remain in full force and effect until the payment in full of the Guaranteed Obligations. Each Qualified ECP Guarantor intends that this Section 3.16 constitute, and this Section 3.16 shall be deemed to constitute, a "keepwell, support, or other agreement" for the benefit of each other Guarantor for all purposes of Section 1a(18)(A)(v)(II) of the Commodity Exchange Act.

3.17 Intercreditor Agreement. All rights and remedies of the Administrative Agent hereunder are, as between the Administrative Agents (as defined in the Intercreditor Agreement) and the Collateral Agents (as defined in the Intercreditor Agreement), subject to the terms of the Intercreditor Agreement. This provision is for the benefit of, and may be enforced exclusively by, the Administrative Agents and the Collateral Agents only. For the avoidance of doubt, this provision is not for the benefit of any Guarantor and may not, under any circumstances, be enforced by any Guarantor.

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, each of the undersigned Guarantors has caused this Guaranty to be duly executed and delivered by its officer thereunto duly authorized as of the date first written above.

Montreign Operating Company, LLC,
a New York limited liability company

By:	/s/ Joseph A. D'Amato
Name:	Joseph A. D'Amato
Title:	President

EMPIRE RESORTS REAL ESTATE I, LLC,
a New York limited liability company

By:	/s/ Joseph A. D'Amato
Name:	Joseph A. D'Amato
Title:	President

EMPIRE RESORTS REAL ESTATE II, LLC,
a New York limited liability company

By:	/s/ Joseph A. D'Amato
Name:	Joseph A. D'Amato
Title:	President

EXHIBIT 10.47

PLEDGE AND SECURITY AGREEMENT

among

MONTREIGN OPERATING COMPANY, LLC,
as Borrower and a Grantor

and

EACH OF THE OTHER GRANTORS PARTY HERETO,
as Grantors

and

CREDIT SUISSE AG, CAYMAN ISLANDS BRANCH,
as Collateral Agent

dated as of January 24, 2017

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This PLEDGE AND SECURITY AGREEMENT, dated as of January 24, 2017 (this "**Agreement**"), is made by (a) MONTREIGN OPERATING COMPANY, LLC, a New York limited liability company (the "**Borrower**"), and (b) EACH OF THE OTHER PARTIES HERETO, whether as an original signatory hereto or as an Additional Grantor (each, a "**Grantor**" and, collectively, together with the Borrower, the "**Grantors**"), in favor of CREDIT SUISSE AG, CAYMAN ISLANDS BRANCH, in its capacity as collateral agent for the benefit of the Secured Parties (together with its successors and assigns in such capacity, the "**Collateral Agent**").

RECITALS

WHEREAS, reference is made to that certain Building Term Loan Agreement, dated as of the date hereof (as amended, amended and restated, supplemented or otherwise modified from time to time, the "**Credit Agreement**"), by and among the Borrower, the banks, financial institutions and other entities from time to time party thereto in the capacity of lenders and Credit Suisse AG, Cayman Islands Branch, in its capacity as administrative agent (together with its successors and assigns in such capacity, the "**Administrative Agent**");

WHEREAS, subject to the terms and conditions of the Credit Agreement, certain Grantors may enter into one or more Specified Hedging Agreements or Specified Cash Management Agreements with one or more counterparties to any such Specified Hedging Agreements or any such Specified Cash Management Agreements, respectively; and

WHEREAS, in consideration of the extensions of credit and other accommodations of the Secured Parties as set forth in the Credit Agreement, the Specified Hedging Agreements and the Specified Cash Management Agreements, respectively, each Grantor has agreed to secure such Grantor's and the other Grantor's obligations under the Loan Documents, the Specified Hedging Agreements and the Specified Cash Management Agreements as set forth herein.

AGREEMENT

NOW, THEREFORE, in consideration of the agreements, provisions and covenants herein contained, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, each Grantor and the Collateral Agent, for the benefit of the Secured Parties, hereby agree as follows:

SECTION 1.DEFINITIONS; GRANT OF SECURITY.

1.1 General Definitions. In this Agreement, the following terms shall have the following meanings:

"**Account Debtor**" shall mean each Person who is obligated on a Receivable or any Supporting Obligation related thereto as well as each Person that is an "account debtor" as defined in Article 9 of the UCC.

"**Accounts**" shall mean all "accounts" as defined in Article 9 of the UCC.

"**Additional Grantors**" shall have the meaning given in Section 5.2.

"**Administrative Agent**" shall have the meaning given in the recitals.

"**Agreement**" shall have the meaning given in the preamble.

"**Assigned Agreements**" shall mean all agreements and contracts (other than the Loan Documents and the Revolving Facility Documents) to which a Grantor is a party as of the date hereof, or to which a Grantor becomes a party after the date hereof, including, without limitation, each Material Contract, as each such agreement may be amended, amended and restated, supplemented or otherwise modified from time to time.

"**Bankruptcy Code**" shall mean Title 11 of the United States Code entitled "Bankruptcy" as now and hereafter in effect, or any successor statute.

"**Borrower**" shall have the meaning given in the preamble.

"**Cash Proceeds**" shall have the meaning given in Section 7.7.

"**Chattel Paper**" shall mean all "chattel paper" as defined in Article 9 of the UCC, including, without limitation, "electronic chattel paper" and "tangible chattel paper", as each term is defined in Article 9 of the UCC.

"**Collateral**" shall have the meaning given in Section 2.1.

"**Collateral Agent**" shall have the meaning given in the preamble.

"**Collateral Records**" shall mean all books, records, ledger cards, files, correspondence, customer lists, blueprints, technical specifications, manuals, computer printouts, tapes, disks and similar items that at any time evidence or contain information relating to any of the Collateral or are otherwise necessary or helpful in the collection thereof or realization thereupon.

"**Collateral Support**" shall mean all property (real or personal) assigned, hypothecated or otherwise securing any Collateral and shall include any security agreement or other agreement granting a lien or security interest in such real or personal property.

"**Commercial Tort Claims**" shall mean all "commercial tort claims" as defined in Article 9 of the UCC, including, without limitation, all commercial tort claims listed on Schedule 4.8.

"**Commodities Accounts**" (i) shall mean all "commodity accounts" as defined in Article 9 of the UCC and (ii) shall include, without limitation, all of the accounts listed on Schedule 4.4(E) under the heading "Commodities Accounts."

"**Commodity Exchange Act**" means the Commodity Exchange Act (7 U.S.C. § 1 et seq.), as amended from time to time, and any successor statute.

"**Copyright Licenses**" shall mean any and all agreements providing for the granting of any right in or to Copyrights (whether any Grantor is licensee or licensor thereunder) including, without limitation, each agreement referred to in Schedule 4.7(B).

"**Copyrights**" shall mean all United States and foreign copyrights (including community designs), including but not limited to copyrights in software and databases, whether registered or unregistered, and, with respect to any and all of the foregoing: (i) all registrations, recordings and applications therefor including, without limitation, the registrations and applications referred to in Schedule 4.7(A); (ii) all extensions and renewals, and any right to obtain any extensions and renewals, thereof; and (iii) all rights corresponding thereto throughout the world.

"**Credit Agreement**" shall have the meaning given in the recitals.

"**Deposit Accounts**" (i) shall mean all "deposit accounts" as defined in Article 9 of the UCC and (ii) shall include, without limitation, all of the accounts listed on Schedule 4.4(F) under the heading "Deposit Accounts".

"**Documents**" shall mean all "documents" as defined in Article 9 of the UCC.

"**Domain Names**" shall mean all Internet domain names and associated uniform resource locator addresses.

"**Equipment**" shall mean: (i) all "equipment" as defined in Article 9 of the UCC; (ii) all machinery, manufacturing equipment, data processing equipment, computers, office equipment, furnishings, furniture, appliances, fixtures and tools (in each case, regardless of whether characterized as equipment under the UCC); and (iii) all accessions or additions thereto, all parts thereof, whether or not at any time of determination incorporated or installed therein or attached thereto, and all replacements therefor, wherever located, now or hereafter existing, including any fixtures.

"Excluded Accounts" shall mean any Deposit Account or Securities Account holding (i) solely Cash and Cash Equivalents required pursuant to Gaming Laws or by Gaming Authorities to be deposited into Gaming Reserves to the extent that a security interest in such Deposit Account may not be granted under applicable Gaming Laws, (ii) solely Cash and Cash Equivalents held, pursuant to ordinary course operations, in payroll accounts of Persons providing the Loan

Parties payroll services, (iii) solely Cash and Cash Equivalents on deposit in 401(k) accounts, trust accounts and pension accounts established in the ordinary course of business, (iv) solely Cash or Cash Equivalents on deposit in segregated accounts for the benefit of the New York State Gaming Commission established in the ordinary course of business, (v) solely proceeds of Indebtedness (and proceeds of such proceeds) incurred pursuant to Section 6.01(j) of the Credit Agreement that have been pledged to the providers of such Indebtedness, (vi) solely Cash and Cash Equivalents held in escrow, fiduciary or cash collateral accounts in the ordinary course of business, (vii) solely Cash and Cash Equivalents in a zero balance account, (viii) solely Cash and Cash Equivalents that do not exceed, at any time for all such Deposit Accounts, $100,000 individually or $500,000 in the aggregate, (ix) solely Cash and Cash Equivalents securing obligations under Hedging Agreements permitted by Section 6.02(bb) of the Credit Agreement or (x) solely Cash and Cash Equivalents held for the purposes described in Section 5.15(b)(viii) of the Credit Agreement.

"**Excluded Swap Obligation**" shall mean, with respect to any Guarantor, (x) as it relates to all or a portion of the Guarantee of such Guarantor, any Swap Obligation if, and to the extent that, such Swap Obligation (or any Guarantee thereof) is or becomes illegal or unlawful under the Commodity Exchange Act or any rule, regulation or order of the Commodity Futures Trading Commission (or the application or official interpretation of any thereof) by virtue of such Guarantor's failure for any reason to constitute an "eligible contract participant" as defined in the Commodity Exchange Act and the regulations thereunder at the time the Guarantee of such Guarantor would otherwise become effective with respect to such Swap Obligation or (y) as it relates to all or a portion of the grant by such Guarantor of a security interest, any Swap Obligation if, and to the extent that, such Swap Obligation (or such security interest in respect thereof) is or becomes illegal or unlawful under the Commodity Exchange Act or any rule, regulation or order of the Commodity Futures Trading Commission (or the application or official interpretation of any thereof) by virtue of such Guarantor's failure for any reason to constitute an "eligible contract participant" as defined in the Commodity Exchange Act and the regulations thereunder at the time the security interest of such Guarantor would otherwise become effective with respect to such Swap Obligation. If a Swap Obligation arises under a master agreement governing more than one swap, such exclusion shall apply only to the portion of such Swap Obligation that is attributable to swaps for which such Guarantee or security interest is or becomes illegal or unlawful.

"**General Intangibles**" (i) shall mean all "general intangibles" as defined in Article 9 of the UCC, including all "payment intangibles" also as defined in Article 9 of the UCC and (ii) shall include, without limitation, all interest rate or currency protection or hedging arrangements, all tax refunds, all licenses, permits, concessions and authorizations, all Assigned Agreements and all Intellectual Property (in each case, regardless of whether characterized as general intangibles under the UCC).

"**Goods**" (i) shall mean all "goods" as defined in Article 9 of the UCC and (ii) shall include, without limitation, all Inventory and Equipment (in each case, regardless of whether characterized as goods under the UCC).

"**Grantors**" shall have the meaning given in the preamble.

"**Instruments**" shall mean all "instruments" as defined in Article 9 of the UCC.

"**Insurance**" shall mean (i) all insurance policies covering any or all of the Collateral (regardless of whether the Collateral Agent is the loss payee thereof) and (ii) all key man life insurance policies.

"**Intellectual Property**" shall mean, collectively, all rights, priorities and privileges with respect to intellectual property (including rights in such intellectual property that arise under any Intellectual Property Licenses), whether arising under United States, multinational or foreign laws or otherwise, including, without limitation, the Copyrights, the Patents, the Trademarks, the Domain Names, the Trade Secrets, and all rights to sue at law or in equity for any infringement or other impairment thereof, including the right to receive all proceeds and damages therefrom.

"**Intellectual Property Licenses**" shall mean, collectively, the Copyright Licenses, the Patent Licenses, the Trademark Licenses and the Trade Secret Licenses.

"**Inventory**" shall mean (i) all "inventory" as defined in Article 9 of the UCC and (ii) all goods held for sale or lease or to be furnished under contracts of service or so leased or furnished, all raw materials, work in process, finished goods, and materials used or consumed in the manufacture, packing, shipping, advertising, selling, leasing, furnishing or production of such inventory or otherwise used or consumed in any Grantor's business; all goods in which any Grantor has an interest in mass or a joint or other interest or right of any kind; and all goods which are returned to or repossessed by any Grantor, all computer programs embedded in any goods and all accessions thereto and products thereof (in each case, regardless of whether characterized as inventory under the UCC).

"**Investment Accounts**" shall mean the Securities Accounts, Commodities Accounts and Deposit Accounts.

"**Investment Related Property**" shall mean: (i) all "investment property" (as such term is defined in Article 9 of the UCC) and (ii) all of the following (regardless of whether classified as investment property under the UCC): all Pledged Equity Interests, all Pledged Debt, the Investment Accounts and all certificates of deposit.

"**Joinder Agreement**" shall mean a Joinder Agreement substantially in the form of Annex I.

"**Letter-of-Credit Right**" shall mean "letter-of-credit right" as defined in Article 9 of the UCC.

"**Money**" shall mean "money" as defined in the UCC.

"**Non-Assignable Contract**" shall mean any agreement, contract, permit, license or other similar government approval to which any Grantor is a party that by its terms purports to restrict or prevent the assignment or granting of a security interest therein (either by its terms or by any federal or state statutory prohibition or otherwise irrespective of whether such prohibition or restriction is enforceable under Section 9-406 through 409 of the UCC).

"**Patent Licenses**" shall mean all agreements providing for the granting of any right in or to Patents (whether any Grantor is licensee or licensor thereunder) including, without limitation, each agreement referred to in Schedule 4.7(D).

"**Patents**" shall mean all United States and foreign patents and certificates of invention, or similar industrial property rights, and applications for any of the foregoing, including, but not limited to: (i) each patent and patent application referred to in Schedule 4.7(C); (ii) all reissues, divisions, continuations, continuations-in-part, extensions, renewals, and reexaminations, and any right to obtain any reissues, divisions, continuations, continuations-in-part, extensions, renewals, and reexaminations, thereof; (iii) all rights corresponding thereto throughout the world; (iv) all inventions and improvements described therein; and (v) all claims, damages, and proceeds of suit arising therefrom.

"**Pledge Supplement**" shall mean any supplement to this Agreement in substantially the form of Exhibit A, together with all supplements to schedules attached thereto.

"**Pledged Debt**" shall mean all Indebtedness owed to any Grantor, including, without limitation, all Indebtedness described on Schedule 4.4(C) under the heading "Pledged Debt," issued by the obligors named therein, the instruments evidencing such Indebtedness, and all interest, cash, instruments and other property or proceeds from time to time received, receivable or otherwise distributed in respect of or in exchange for any or all of such Indebtedness.

"**Pledged Equity Interests**" shall mean all Pledged Stock, Pledged LLC Interests, Pledged Partnership Interests and Pledged Trust Interests.

"**Pledged LLC Interests**" shall mean all current and future interests in any limited liability company owned by any Grantor, including, without limitation, all limited liability company interests listed on Schedule 4.4(A) under the heading "Pledged LLC Interests," and the certificates, if any, representing such limited liability company interests and any interest of such Grantor on the books and records of such limited liability company or on the books and records of any securities intermediary pertaining to such interest and all dividends, distributions, cash, warrants, rights, options, instruments, securities and other property or proceeds from time to time received, receivable or otherwise distributed in respect of or in exchange for any or all of such limited liability company interests.

"**Pledged Partnership Interests**" shall mean all current and future interests in any general partnership, limited partnership, limited liability partnership or other partnership owned by any Grantor, including, without limitation, all partnership interests listed on Schedule 4.4(A) under the heading "Pledged Partnership Interests," and the certificates, if any, representing such partnership interests and any interest of such Grantor on the books and records of such partnership or on the books and records of any securities intermediary pertaining to such interest and all dividends, distributions, cash, warrants, rights, options, instruments, securities and other property or proceeds from time to time received, receivable or otherwise distributed in respect of or in exchange for any or all of such partnership interests.

"**Pledged Stock**" shall mean all current and future shares of capital stock owned by any Grantor, including, without limitation, all shares of capital stock described on Schedule 4.4(A) under the heading "Pledged Stock," and the certificates, if any, representing such shares and any interest of such Grantor on the books and records of the issuer of such shares or on the books and records of any securities intermediary pertaining to such shares, and all dividends, distributions, cash, warrants, rights, options, instruments, securities and other property or proceeds from time to time received, receivable or otherwise distributed in respect of or in exchange for any or all of such shares.

"**Pledged Trust Interests**" shall mean all current and future interests in any trust owned by any Grantor, including, without limitation, all trust interests listed on Schedule 4.4(A) under the heading "Pledged Trust Interests," and the certificates, if any, representing such trust interests and any interest of such Grantor on the books and records of such trust or on the books and records of any securities intermediary pertaining to such interest and all dividends, distributions, cash, warrants, rights, options, instruments, securities and other property or proceeds from time to time received, receivable or otherwise distributed in respect of or in exchange for any or all of such trust interests.

"**Proceeds**" shall mean: (i) all "proceeds" as defined in Article 9 of the UCC; and (ii) shall include all dividends, payments or distributions made with respect to any Investment Related Property and whatever is receivable or received when Collateral or proceeds are sold, exchanged, collected or otherwise disposed of, whether such disposition is voluntary or involuntary (in each case, regardless of whether characterized as proceeds under the UCC).

"**Qualified ECP Guarantor**" shall mean, in respect of any Swap Obligation, each Guarantor that has total assets exceeding $10,000,000 at the time the relevant Guarantee or grant of the relevant security interest becomes effective with respect to such Swap Obligation or such other Person as constitutes an "eligible contract participant" under the Commodity Exchange Act or any regulations promulgated thereunder and can cause another Person to qualify as an "eligible contract participant" at such time by entering into a keepwell under Section 1a(18)(A)(v)(II) of the Commodity Exchange Act.

"**Quarterly Update Date**" shall mean the Closing Date and the last day of any Fiscal Quarter until the first Fiscal Quarter in which a Compliance Certificate for such Fiscal Quarter is delivered or required to be delivered under Section 5.01(d) of the Credit Agreement and thereafter, the date on which a Compliance Certificate for such Fiscal Quarter is delivered.

"**Receivables**" shall mean all rights to payment, whether or not earned by performance, for goods or other property sold, leased, licensed, assigned or otherwise disposed of, or services rendered or to be rendered, including, without limitation all such rights constituting or evidenced by any Account, Chattel Paper, Instrument, General Intangible or Investment Related Property, together with all of Grantor's rights, if any, in any goods or other property giving rise to such right to payment and all Collateral Support and Supporting Obligations related thereto and all Receivables Records.

"**Receivables Records**" shall mean (i) all originals or copies of all documents, instruments or other writings or electronic records or other Records evidencing the Receivables; (ii) all books, correspondence, credit or other files, Records, ledger sheets or cards, invoices, and other papers relating to Receivables, including, without limitation, all tapes, cards, computer tapes, computer discs, computer runs, record keeping systems and other papers and documents relating to the Receivables, whether in the possession or under the control of any Grantor or any computer bureau or agent from time to time acting for any Grantor or otherwise; (iii) all evidences of the filing of financing statements and the registration of other instruments in connection therewith, and amendments, supplements or other modifications thereto, notices to other creditors or secured parties, and certificates, acknowledgments, or other writings, including, without limitation, lien search reports, from filing or other registration officers; (iv) all credit information, reports and memoranda relating thereto; and (v) all other written or nonwritten forms of information related in any way to the foregoing or any Receivable.

"**Record**" shall have the meaning specified in Article 9 of the UCC.

"**Sale Proceeds**" shall mean (i) the proceeds from the sale of the Borrower or one or more of the other Grantors, as a going concern or from the sale of the business as a going concern, (ii) the proceeds from another sale or disposition of any assets of the Grantors that includes any Gaming License, Permit or approval or benefits from any Gaming License, Permit or approval or where the assets sold have the benefit of any Gaming License, Permit or approval or (iii) any other economic value (whether in the form of cash or otherwise) received, ascribed or distributed that is associated with the Gaming Licenses, Permits or approvals.

"**Secured Obligations**" shall have the meaning given in Section 3.1.

"**Securities Accounts**" (i) shall mean all "securities accounts" as defined in Article 8 of the UCC and (ii) shall include, without limitation, all of the accounts listed on Schedule 4.4(D) under the heading "Securities Accounts."

"**Securities Entitlements**" shall mean all "securities entitlements" as defined in Article 8 of the UCC.

"**Software**" shall mean all computer programs, object code, source code and supporting documentation, including, without limitation, all "software" as such term is defined in the New York UCC and computer programs that may construed as included in the definition of "goods" in the New York UCC, all licensed rights to the foregoing, and all media on which any such programs, code, documentation or associated data may be stored.

"**Supporting Obligation**" shall mean all "supporting obligations" as defined in Article 9 of the UCC.

"**Swap Obligation**" shall mean, with respect to any Guarantor, any obligation to pay or perform under any agreement, contract or transaction that constitutes a "swap" within the meaning of section 1a(47) of the Commodity Exchange Act.

"**Termination Date**" shall mean the date on which all Secured Obligations have been "paid in full" as such term is defined in the Credit Agreement.

"**Trademark Licenses**" shall mean any and all agreements providing for the granting of any right in or to Trademarks (whether any Grantor is licensee or licensor thereunder) including, without limitation, each agreement referred to in Schedule 4.7(F).

"**Trademarks**" shall mean all United States and foreign trademarks, trade names, corporate names, company names, business names, fictitious business names, , service marks, certification marks, collective marks, logos, other source or business identifiers, designs and general intangibles of a like nature, and all registrations and applications for any of the foregoing including, but not limited to: (i) the registrations, recordings and applications referred to in Schedule 4.7(E); (ii) all extensions and renewals, and any right to obtain any extensions and renewals, of any of the foregoing; and(iii) all of the goodwill of the business connected with the use of and symbolized by the foregoing.

"**Trade Secret Licenses**" shall mean any and all agreements providing for the granting of any right in or to Trade Secrets (whether any Grantor is licensee or licensor thereunder) including, without limitation, each agreement referred to in Schedule 4.7(G).

"**Trade Secrets**" shall mean all trade secrets and all other confidential or proprietary information and know-how whether or not such Trade Secret has been reduced to a writing or other tangible form, including all documents and things embodying, incorporating, or referring in any way to such Trade Secret.

"**UCC**" shall mean the Uniform Commercial Code as the same may, from time to time, be in effect in the State of New York; provided, however, in the event that, by reason of mandatory provisions of law, any or all of the perfection or priority of the security interest in any Collateral is governed by the Uniform Commercial Code as in effect in a jurisdiction other than the State of New York, the term "UCC" shall mean the Uniform Commercial Code as in effect in such other jurisdiction for purposes of the provisions hereof relating to such perfection or priority and for purposes of definitions related to such provisions.

"**Unincorporated Materials**" shall have the meaning given in the Disbursement Agreement.

1.2 Definitions; Interpretation. All capitalized terms used herein (including the preamble and recitals hereto) and not otherwise defined herein shall have the meanings ascribed thereto in the Credit Agreement or, if not defined therein, in the UCC. The rules of construction set forth in Sections 1.02 through 1.08 of the Credit Agreement, including with respect to the meaning of the expressions "payment in full", "paid in full" and any other similar terms or phrases, shall be applicable to this Agreement *mutatis mutandis*. If any conflict or inconsistency exists between this Agreement and the Credit Agreement, the Credit Agreement shall govern. All references herein to provisions of the UCC shall include all successor provisions under any subsequent version or amendment to any Article of the UCC. Except as expressly specified otherwise herein, any reference

herein to any Exhibit or Schedule to this Agreement shall be deemed to refer to such Exhibit or Schedule as amended or supplemented from time to time.

SECTION 2. GRANT OF SECURITY.

2.1 Grant of Security Interest by Grantors. Each Grantor hereby assigns as collateral security to the Collateral Agent (for the ratable benefit of the Secured Parties), and hereby grants to the Collateral Agent (for the ratable benefit of the Secured Parties) a security interest in and continuing lien on, all of such Grantor's right, title and interest in, to and under all personal property of such Grantor including, without limitation, all of the following property of such Grantor, in each case whether now owned or existing or hereafter acquired or arising and wherever located (collectively, but exclusive of any Excluded Collateral, the "**Collateral**"), for the prompt and complete payment and performance in full when due and with all rights and remedies under the UCC and other applicable law (whether at stated maturity, by required prepayment, declaration, acceleration, demand or otherwise) of the Secured Obligations:

(a) Accounts;

(b) Chattel Paper;

(c) Documents;

(d) General Intangibles;

(e) Goods;

(f) Instruments;

(g) Insurance;

(h) Intellectual Property;

(i) Software;

(j) Investment Related Property;

(k) Letters of Credit and Letter-of-Credit Rights;

(l) Money;

(m) Receivables and Receivable Records;

(n) Commercial Tort Claims;

(o) Pledged Equity Interests;

(p) Sale Proceeds;

(q) to the extent not otherwise included above, all Collateral Records, Collateral Support and Supporting Obligations relating to any of the foregoing; and

(r) to the extent not otherwise included above, all Proceeds, right to Proceeds, products, accessions, rents and profits of or in respect of any of the foregoing.

2.2 Certain Limited Exclusions. Notwithstanding anything herein to the contrary, but subject to the last sentence of this Section 2.2, in no event shall the security interest granted under Section 2.1 attach to any Excluded Collateral, and Collateral shall not include any Excluded Collateral. Notwithstanding the foregoing, all Proceeds of the Excluded Collateral and the right to receive such Proceeds shall constitute Collateral hereunder to the extent such Proceeds do not independently constitute Excluded Collateral and shall be included within the property and assets over which a security interest is granted under Section 2.1, except to the extent such Proceeds would constitute Excluded Collateral.

SECTION 3. SECURITY FOR OBLIGATIONS; GRANTORS REMAIN LIABLE.

3.1 Security for Obligations. This Agreement secures, and the Collateral is collateral security for, with respect to each Grantor, the prompt and complete payment and performance in full when due, whether at stated maturity, by required prepayment, declaration, acceleration, demand or otherwise (including the payment of amounts that would become due but for the operation of the automatic stay under Section 362(a) of the Bankruptcy Code), of all Obligations of such Grantor (collectively, the "**Secured Obligations**"). Notwithstanding any provision hereof or in any other Loan Document to the contrary, in no event will the Secured Obligations include any Excluded Swap Obligations.

3.2 Continuing Liability Under Collateral. Notwithstanding anything herein to the contrary, (i) each Grantor shall remain liable for obligations under the Collateral and nothing contained herein is intended or shall be a delegation of duties to the Collateral Agent or any Secured Party; (ii) each Grantor shall remain liable under each of the agreements included in the Collateral, including, without limitation, any agreements relating to Pledged Partnership Interests or Pledged LLC Interests, in each case to perform all of the obligations undertaken by it thereunder all in accordance with and pursuant to the terms and provisions thereof and neither the Collateral Agent nor any other Secured Party shall have any obligation or liability under any of such agreements by reason of or arising out of this Agreement or any other document related thereto nor shall the Collateral Agent nor any other Secured Party have any obligation to make any inquiry as to the nature or sufficiency of any payment received by it or have any obligation to take any action to

collect or enforce any rights under any agreement included in the Collateral, including, without limitation, any agreements relating to Pledged Partnership Interests or Pledged LLC Interests; and (iii) the exercise by the Collateral Agent of any of its rights hereunder shall not release any Grantor from any of its duties or obligations under the contracts and agreements included in the Collateral.

SECTION 4. REPRESENTATIONS AND WARRANTIES AND COVENANTS.

4.1 Generally.

(a) Representations and Warranties. Each Grantor hereby represents and warrants, on the Closing Date and on each Credit Date (or with respect to clauses (ii)(y), (vii), and (viii) below, as of the last Quarterly Update Date), that:

(i) it has indicated on Schedule 4.1(A): (A) the type of organization of such Grantor, (B) the jurisdiction of organization of such Grantor, (C) its organizational identification number and (D) the jurisdiction where the chief executive office or its sole place of business is, and for the one-year period preceding the date hereof (or such shorter period as such Grantor has been in existence) has been, located;

(ii) (x) the full legal name of such Grantor is as set forth on Schedule 4.1(A) and (y) it has not done in the last five (5) years (or such shorter period as such Grantor has been in existence), and does not do, business under any other name (including any trade-name or fictitious business name) except for those names set forth on Schedule 4.1(B);

(iii) except as described on Schedule 4.1(C), it has not changed its jurisdiction of organization, chief executive office or sole place of business or its corporate structure in any way (e.g., by merger, consolidation, change in corporate form or otherwise) within the past five (5) years (or such shorter period as such Grantor has been in existence);

(iv) (A) upon the filing of all UCC financing statements naming each Grantor as "debtor" and the Collateral Agent as "secured party" and describing the Collateral in the filing offices set forth opposite such Grantor's name on Schedule 4.1(E) and other filings delivered by each such Grantor; (B) upon delivery of all Instruments, Chattel Paper and certificated Pledged Equity Interests and Pledged Debt; (C) upon sufficient identification of Commercial Tort Claims; (D) upon execution by all applicable parties thereto of a control agreement establishing the Collateral Agent's "control" (within the meaning of Section 8-106, 9-106 or 9-104 of the UCC, as applicable) with respect to any Investment Account (other than any Excluded Account); (E) upon consent of the issuer with respect to Letter-of-Credit Rights; (F) to the extent not subject to Article 9 of the UCC, upon recordation of the security interests granted hereunder in material registered Patents, Trademarks and Copyrights in the United States Patent and Trademark Office and the United States Copyright

Office, as applicable; and (G) in the case of Money, the Collateral Agent taking possession of such Money, the security interests granted to the Collateral Agent hereunder constitute valid and perfected (with respect to Intellectual Property, only if and to the extent perfection may be achieved in the United States by the recordations referred to in clauses (A) and (F)) first priority Liens (subject only to Permitted Liens but prior and superior in right to the rights of any other Person (except in the case of Collateral other than Pledged Equity Interests, Persons holding Senior Permitted Liens and then only to the extent thereof)) on all of the Collateral (other than (w) Insurance to the extent it cannot be perfected under the UCC, (x) motor vehicles, (y) any Intellectual Property arising under laws other than that of the United States and (z) On-Site Cash and other Cash not required to be deposited in an Investment Account pursuant to the Loan Documents (except, with respect to clause (z), to the extent constituting proceeds of other Collateral));

(v) subject to Section 11.4, all actions and consents, including all filings, notices, registrations and recordings necessary for the exercise by the Collateral Agent of the voting or other rights provided for in this Agreement or the exercise of remedies in respect of the Collateral have been made or obtained, other than those required under Gaming Laws and federal and state securities laws (with respect only to the exercise of remedies) and consents required in connection with Non-Assignable Contracts;

(vi) no authorization, approval or other action by, and no notice to or filing with, any Governmental Authority or regulatory body is required for either (A) the pledge or grant by any Grantor of the Liens purported to be created in favor of the Collateral Agent hereunder (other than such authorizations, approvals or actions obtained on or prior to the date hereof) or (B) subject to Section 11.4, the exercise by Collateral Agent of any rights or remedies in respect of any Collateral (whether specifically granted or created hereunder or created or provided for by applicable law), except (y) for the filings, actions and approvals contemplated by clause (iv) above and (z) in the case of the exercise of the voting or other rights provided for in this Agreement or the exercise of remedies, those contemplated by clause (v) above, including as may be required under Gaming Laws and in connection with the disposition of any Investment Related Property by laws generally affecting the offering and sale of Securities;

(vii) except as described on Schedule 4.1(F), none of the Collateral constitutes, or is the Proceeds of, "farm products" (as defined in the UCC);

(viii) except as described on Schedule 4.1(G), it does not own any "as extracted collateral" (as defined in the UCC) or any timber to be cut; and

(ix) each Grantor has been duly organized as an entity of the type as set forth opposite such Grantor's name on Schedule 4.1(A) solely under the laws of the jurisdiction as set forth opposite such Grantor's name on Schedule 4.1(A) and, except as disclosed from time to time to the Collateral Agent and the Administrative Agent in writing, remains duly existing as such, and no such Grantor has filed any certificates of domestication, transfer or continuance in any other jurisdiction.

(b) Covenants and Agreements. Each Grantor hereby covenants and agrees that:

(i) except for the security interest created by this Agreement, it shall not create or suffer to exist any Lien upon or with respect to any of the Collateral, except Permitted Liens;

(ii) it shall not change such Grantor's name, identity, corporate structure (e.g., by merger, consolidation, change in corporate form or otherwise), sole place of business, chief executive office, type of organization or jurisdiction of organization unless it shall have (A) notified the Collateral Agent and the Administrative Agent in writing, by executing and delivering to the Collateral Agent and the Administrative Agent a completed Pledge Supplement at least ten (10) days prior to any such change or establishment, identifying such new proposed name, identity, corporate structure, sole place of business, chief executive office, type of organization, or jurisdiction of organization and providing such other information in connection therewith as the Collateral Agent and the Administrative Agent may reasonably request and (B) taken all actions necessary to maintain the continuous validity, perfection and the same or better priority of the Collateral Agent's security interest in the Collateral intended to be granted and agreed to hereby; and

(iii) it shall not sell, transfer or assign (by operation of law or otherwise) any Collateral except in accordance with the Credit Agreement and the other Loan Documents.

4.2 Equipment and Inventory

(a) Representations and Warranties. Each Grantor represents and warrants, on the Closing Date and on each Credit Date, that, as of the last Quarterly Update Date:

(i) except with respect to Equipment or Inventory having a value of less than $500,000 individually or $2,000,000 in the aggregate (across all Grantors), all Equipment and Inventory included in the Collateral (other than such Equipment and Inventory that is in transit, out for repair or on loan to employees in the ordinary course of business or Unincorporated Materials) is located only at the locations specified in Schedule 4.2; and

(ii) Schedule 4.2 contains the name and address of any warehouseman, bailee or other third party in possession of any Inventory or Equipment included in the Collateral other than any Inventory or Equipment having a value less than $500,000 individually or $1,000,000 in the aggregate (across all Grantors) or otherwise constituting Unincorporated Materials.

(b) Covenants and Agreements. Each Grantor covenants and agrees that:

(i) except with respect to property having a value of less than $2,000,000 in the aggregate (across all Grantors) and any property that is in transit, out for repair or on loan to employees in the ordinary course of business or Unincorporated Materials, it shall keep the Equipment and Inventory included in the Collateral and any Documents evidencing any such Equipment and Inventory in the locations specified in Schedule 4.2 unless it shall have (A) notified the Collateral Agent and the Administrative Agent in writing, by executing and delivering to the Collateral Agent and the Administrative Agent a completed Pledge Supplement on or before the next Quarterly Update Date after any change in locations, identifying such new locations and providing such other information in connection therewith as the Collateral Agent or the Administrative Agent may reasonably request and (B) taken all actions necessary or advisable to maintain the continuous validity, perfection and the same or better priority of the Collateral Agent's security interest in the Collateral intended to be granted and agreed to hereby, or to enable the Collateral Agent to exercise and enforce its rights and remedies hereunder, with respect to such Equipment and Inventory;

(ii) it shall not deliver any Document evidencing any Equipment and Inventory included in the Collateral to any Person other than the issuer of such Document to claim the Goods evidenced therefor or the Collateral Agent; and

(iii) except for Equipment or Inventory having a value of less than $500,000 individually or $2,000,000 in the aggregate (across all Grantors) or otherwise constituting Unincorporated Materials, if any Equipment or Inventory is in possession or control of any third party (other than such Equipment and Inventory that is in transit, out for repair or on loan to employees in the ordinary course of business), each Grantor shall, at the request of the Collateral Agent, join with the Collateral Agent in notifying the third party of the Collateral Agent's security interest.

4.3 Receivables.

(a) Covenants and Agreements: Each Grantor hereby covenants and agrees that:

(i) other than in the ordinary conduct of its business or the extension of payment terms of markers of gaming patrons (including credit arrangements pursuant to Section 1339

of the New York State Racing, Pari-Mutuel Wagering and Breeding Law and other Gaming Laws), and except as otherwise provided in subsection (ii) below, during the continuance of an Event of Default, such Grantor shall not (A) grant any extension or renewal of the time of payment of any Receivable, (B) compromise or settle any dispute, claim or legal proceeding with respect to any Receivable for less than the total unpaid balance thereof, (C) release, wholly or partially, any Person liable for the payment thereof, or (D) allow any credit or discount thereon;

(ii) at any time following the occurrence and during the continuation of an Event of Default, the Collateral Agent shall have the right at any time to (A) notify, or require any Grantor to notify, any Account Debtor of the Collateral Agent's security interest in the Receivables and any Supporting Obligation, (B) direct the Account Debtors under any Receivables to make payment of all amounts due or to become due to such Grantor thereunder directly to the Collateral Agent, (C) notify, or require any Grantor to notify, each Person maintaining a lockbox or similar arrangement to which Account Debtors under any Receivables have been directed to make payment to remit all amounts representing collections on checks and other payment items from time to time sent to or deposited in such lockbox or other arrangement directly to the Collateral Agent, and (D) enforce, at the expense of such Grantor, collection of any such Receivables and to adjust, settle or compromise the amount or payment thereof, in the same manner and to the same extent as such Grantor might have done. If the Collateral Agent notifies any Grantor that it has elected to collect the Receivables in accordance with the preceding sentence, any payments of Receivables received by such Grantor shall be forthwith (and in any event within two (2) Business Days) deposited by such Grantor in the exact form received, duly indorsed by such Grantor to the Collateral Agent if required, in an Investment Account "controlled" (for purposes of the UCC) by the Collateral Agent (it being understood that each Grantor agrees to promptly comply with any reasonable request of the Collateral Agent to establish or enter into a Control Agreement with respect to such an Investment Account), and until so turned over, all amounts and proceeds (including checks and other instruments) received by such Grantor in respect of the Receivables, any Supporting Obligation or Collateral Support shall be received in trust for the benefit of the Collateral Agent hereunder and shall be segregated from other funds of such Grantor and such Grantor shall not adjust, settle or compromise the amount or payment of any Receivable, or release wholly or partly any Account Debtor or obligor thereof, or allow any credit or discount thereon; and

(iii) it shall use its commercially reasonable efforts to keep in full force and effect any Supporting Obligation or Collateral Support relating to any Receivable in excess of $500,000.

(b) Delivery and Control of Receivables. With respect to any Receivables (other than (i) Receivables generated by casino patrons in the ordinary course of gaming activities and (ii) other Receivables in an amount no greater than $500,000 individually or $2,000,000 in the aggregate (across all Grantors)) that are evidenced by, or constitute, Chattel Paper or Instruments (other than checks received in the ordinary course of business), each Grantor shall cause each originally executed copy thereof to be delivered to the Collateral Agent (or its agent or designee) appropriately indorsed to the Collateral Agent or indorsed in blank: (A) with respect to any such Receivables in existence on the date hereof, on or prior to the date hereof, and (B) with respect to any such Receivables hereafter arising, on or before the immediately succeeding Quarterly Update Date. With respect to any Receivables (other than (i) Receivables generated by casino patrons in the ordinary course of gaming activities and (ii) other Receivables in an amount no greater than $500,000 individually or $2,000,000 in the aggregate (across all Grantors)) which would constitute "electronic chattel paper" under Article 9 of the UCC, each Grantor shall take all steps necessary to give the Collateral Agent control over such Receivables (within the meaning of Section 9-105 of the UCC): (A) with respect to any such Receivables in existence on the date hereof, on or prior to the date hereof, and (B) with respect to any such Receivables hereafter arising, on or before the immediately succeeding Quarterly Update Date.

4.4 Investment Related Property.

4.4.1 Investment Related Property Generally.

(a) Covenants and Agreements. Each Grantor hereby covenants and agrees that:

(i) in the event it acquires rights in any Investment Related Property (other than Cash Equivalents credited to a Securities Account) that is Collateral after the date hereof with a value in excess of $500,000 individually or $2,000,000 in the aggregate, it shall deliver to the Collateral Agent and the Administrative Agent, on or before the Quarterly Update Date immediately following any such acquisition, a completed Pledge Supplement reflecting such new Investment Related Property. Notwithstanding the foregoing, it is understood and agreed that the security interest of the Collateral Agent shall attach to all Investment Related Property that is Collateral immediately upon any Grantor's acquisition of rights therein and shall not be affected by the failure of any Grantor to deliver a supplement to Schedule 4.4 as required hereby;

(ii) except as provided in the immediately succeeding sentence, in the event such Grantor receives any dividends, interest or distributions on any Investment Related Property that is Collateral, or any securities or other property upon the merger, consolidation, liquidation or dissolution of any issuer of any such Investment Related Property, then (A) such dividends, interest or distributions and securities or other property shall be included

in the definition of Collateral without further action and (B) such Grantor shall promptly take all actions, if any, necessary or, in the reasonable opinion of the Collateral Agent upon notice to such Grantor, necessary to ensure the validity, perfection, at least the same priority and, if applicable, control of the Collateral Agent over such Investment Related Property (including, without limitation, delivery thereof to the Collateral Agent) intended to be granted and agreed to hereby and pending any such action such Grantor shall be deemed to hold such dividends, interest, distributions, securities or other property in trust for the benefit of the Collateral Agent and shall segregate such dividends, distributions, securities or other property from all other property of such Grantor. Notwithstanding the foregoing, so long as no Event of Default shall have occurred and be continuing, the Collateral Agent authorizes each Grantor to retain all dividends and distributions paid and all payments of principal and interest; and

(iii) each Grantor consents to the grant by each other Grantor of a security interest in all Investment Related Property that is Collateral to the Collateral Agent.

(b) Delivery and Control.

With respect to any Investment Related Property that is Collateral that is (a) represented by a certificate or (b) that is an "instrument" (other than (i) any Investment Related Property credited to a Securities Account, (ii) instruments generated by casino patrons in the ordinary course of gaming activities, (iii) Investment Related Property constituting Pledged Debt with an aggregate value of less than $500,000 and (iv) checks received in the ordinary course of business), it shall cause such certificate or instrument to be delivered to the Collateral Agent, indorsed in blank by an "effective indorsement" (as defined in Section 8-107 of the UCC), regardless of whether such certificate constitutes a "certificated security" for purposes of the UCC. With respect to any Investment Related Property that is Collateral that is an "uncertificated security" for purposes of the UCC (other than any "uncertificated securities" credited to a Securities Account), it shall use reasonable commercial efforts to cause the issuer of such uncertificated security to either (A) register the Collateral Agent as the registered owner thereof on the books and records of the issuer or (B) execute an agreement substantially in the form of Exhibit B, pursuant to which such issuer agrees to comply with the Collateral Agent's instructions with respect to such uncertificated security without further consent by such Grantor.

(c) Voting and Distributions.

(i) Subject to clause (ii) below, each Grantor shall be entitled to exercise or refrain from exercising any and all voting and other consensual rights pertaining to the Investment Related Property or any part thereof.

(ii) Upon the occurrence and during the continuation of an Event of Default and following written notice by the Collateral Agent to such Grantor (although no such notice shall be required if an Event of Default under Section 7.01(h) or (i) of the Credit Agreement has occurred and is continuing):

(A) all rights of such Grantor to exercise or refrain from exercising the voting and other consensual rights which it would otherwise be entitled to exercise pursuant hereto shall cease and all such rights shall thereupon become vested in the Collateral Agent who shall thereupon have the sole right to exercise or refrain from exercising such voting and other consensual rights; and

(B) in order to permit the Collateral Agent to exercise the voting and other consensual rights which it may be entitled to exercise pursuant hereto and to receive all dividends and other distributions which it may be entitled to receive hereunder: (y) such Grantor shall promptly execute and deliver (or cause to be executed and delivered) to the Collateral Agent all proxies, dividend payment orders and other instruments as the Collateral Agent may from time to time reasonably request and (z) such Grantor acknowledges that the Collateral Agent may utilize the power of attorney set forth in Section 6.1.

(d) Certain Permitted Actions to Protect Investment Related Property.

In addition to the foregoing, if any issuer of any Investment Related Property constituting Collateral (which Investment Related Property has a value in excess of $500,000 individually or $1,000,000 in the aggregate) is located in a jurisdiction outside of the United States, each Grantor shall promptly notify the Collateral Agent and the Administrative Agent thereof and take, upon the request of the Collateral Agent or the Administrative Agent, such additional actions, including, without limitation, using commercially reasonable efforts to cause the issuer to register the pledge on its books and records or make such filings or recordings, in each case as may be necessary or, in the reasonable opinion of the Collateral Agent, advisable, under the laws of such issuer's jurisdiction to insure the validity, perfection and priority of the security interest of the Collateral Agent. Upon the occurrence and during the continuation of an Event of Default, the Collateral Agent shall have the right, without notice to any Grantor, to transfer all or any portion of such Investment Related Property to its name or the name of its nominee or agent. In addition, upon the occurrence and during the continuation of an Event of Default, the Collateral Agent shall have the right at any time, without notice to any Grantor, to exchange any certificates or instruments representing any such Investment Related Property for certificates or instruments of smaller or larger denominations.

4.4.2 Pledged Equity Interests

(a) Representations and Warranties. Each Grantor hereby represents and warrants that:

(i) as of the Closing Date and on each Credit Date, as of the most recent Quarterly Update Date, Schedule 4.4(A) sets forth under the headings "Pledged Stock," "Pledged LLC

Interests," "Pledged Partnership Interests" and "Pledged Trust Interests," respectively, all of the Pledged Stock, Pledged LLC Interests, Pledged Partnership Interests and Pledged Trust Interests owned by any Grantor and such Pledged Equity Interests constitute the percentage of issued and outstanding shares of stock, percentage of membership interests, percentage of partnership interests or percentage of beneficial interest of the respective issuers thereof indicated on such Schedule 4.4(A);

(ii) it is the record and beneficial owner of the Pledged Equity Interests free of all Liens other than Liens created by the Loan Documents and other Permitted Liens described in clauses (b), (s), (x) and (bb) of Section 6.02 of the Credit Agreement; and

(iii) without limiting the generality of Section 4.1(a)(v), but subject to Section 11.4 and the exceptions contained in Section 4.1(a)(v), no consent of any Person (other than has already been obtained) including any other general or limited partner, any other member of a limited liability company, any other shareholder or any other trust beneficiary is necessary in connection with the creation, perfection or first priority status of the security interest of the Collateral Agent in any Pledged Equity Interests included in the Collateral or the exercise by the Collateral Agent of the voting or other rights provided for in this Agreement or the exercise of remedies in respect thereof.

(b) Covenants and Agreements. Each Grantor hereby covenants and agrees that:

(i) without the prior written consent of the Collateral Agent or the Administrative Agent, it shall not vote to enable or take any other action to, except as permitted by the Credit Agreement and the other Loan Documents, amend or terminate any partnership agreement, limited liability company agreement, certificate of incorporation, by-laws or other organizational documents in any way that adversely affects the validity, perfection or priority of the Collateral Agent's security interest;

(ii) in the event that any Pledged Partnership Interests or Pledged LLC Interests included in the Collateral which are not securities (for purposes of the UCC) on the date hereof become treated as securities for purposes of the UCC, the applicable Grantor shall promptly (A) notify the Collateral Agent and the Administrative Agent in writing of such treatment and (B) take all steps necessary or, in the reasonable opinion of the Collateral Agent upon written notice to such Grantor, advisable to establish the Collateral Agent's "control" (for purposes of the UCC) of such Pledged Partnership Interests or Pledged LLC Interests, as applicable; and

(iii) each Grantor consents to the grant by each other Grantor of a security interest in all Investment Related Property included in the Collateral to the Collateral Agent and, without limiting the foregoing, consents to the transfer of any Pledged Partnership Interest

and any Pledged LLC Interest to the Collateral Agent or its nominee in accordance with this Agreement following the occurrence and during the continuation of an Event of Default and to the substitution of the Collateral Agent or its nominee as a partner in any partnership or as a member in any limited liability company with all the rights and powers (including economic, voting and control rights) related thereto.

4.4.3 Pledged Debt

Each Grantor hereby represents and warrants that (a) as of the Closing Date and each Credit Date, as of the immediately preceding Quarterly Update Date, Schedule 4.4(C) sets forth under the heading "Pledged Debt" all of the Pledged Debt with a value in excess of $500,000 individually or $2,000,000 in the aggregate owned by any Grantor (excluding any Indebtedness owed by gaming patrons) and (b) all of such Pledged Debt issued by an Affiliate of such Grantor is the legal, valid and binding obligation of the issuers thereof and, except as set forth on Schedule 4.4(C), is not in default in any material respect.

4.4.4 Investment Accounts

(a) Representations and Warranties. Each Grantor hereby represents and warrants that:

(i) as of the Closing Date and each Credit Date, as of the immediately preceding Quarterly Update Date, Schedules 4.4(D) and (E) sets forth under the headings "Securities Accounts" and "Commodities Accounts," respectively, all of the Securities Accounts and Commodities Accounts in which each Grantor has an interest;

(ii) each Grantor is the sole entitlement holder of each of its Securities Accounts and Commodities Accounts, and such Grantor has not consented to, and is not otherwise aware of, any Person (other than the Collateral Agent pursuant hereto, the Disbursement Agent and the Revolving Collateral Agent pursuant to the Revolving Facility Documents) having "control" (within the meanings of Sections 8-106 and 9-106 of the UCC) over, or any other interest in, any such Securities Account or Commodities Account or securities or other property credited thereto;

(iii) as of the Closing Date and each Credit Date, as of the immediately preceding Quarterly Update Date, Schedule 4.4(F) sets forth under the headings "Deposit Accounts" all of the Deposit Accounts in which each Grantor has an interest;

(iv) each Grantor is the sole account holder of each of its Deposit Accounts (other than Excluded Accounts) and such Grantor has not consented to, and is not otherwise aware of, any Person (other than the Collateral Agent pursuant hereto, the Disbursement Agent, any Person as a result of a Permitted Lien and the applicable depository institution) having

"control" (within the meaning of Section 9-104 of the UCC) over, or any other interest in, any such Deposit Account or any money or other property deposited therein; and

(v) each Grantor has taken all actions (within the time requirements specified by the Credit Agreement and the other Loan Documents to the extent expressly provided therein) necessary, including those specified in Section 4.4.4(b), to: (A) establish the Collateral Agent's "control" (within the meanings of Sections 8-106 and 9-106 of the UCC) over any portion of the Investment Related Property constituting Certificated Securities, Uncertificated Securities, Securities Accounts, Securities Entitlements or Commodities Accounts (each as defined in the UCC); (B) establish the Collateral Agent's "control" (within the meaning of Section 9-104 of the UCC) over all Deposit Accounts (other than Excluded Accounts); and (C) deliver all Instruments to the Collateral Agent, in each case except to the extent constituting Excluded Collateral.

(b) Delivery and Control.

With respect to any Investment Related Property consisting of Securities Accounts or Securities Entitlements (other than Excluded Accounts), each Grantor shall cause the securities intermediary maintaining such Securities Account or Securities Entitlement to enter into an agreement acceptable to the securities intermediary, the Administrative Agent and the Collateral Agent, which is effective to establish "control" under the UCC pursuant to which it shall agree to comply with the Collateral Agent's "entitlement orders" without further consent by such Grantor. With respect to any Investment Related Property that is a Deposit Account (other than Excluded Accounts), each Grantor shall cause the depositary institution maintaining such account to enter into an agreement reasonably acceptable to the depositary institution, the Administrative Agent and the Collateral Agent, which is effective to establish "control" under the UCC, pursuant to which the Collateral Agent shall have "control" (within the meaning of Section 9-104 of the UCC) over such Deposit Account. Each Grantor shall have entered into such control agreement or agreements with respect to: (A) any Securities Accounts, Securities Entitlements or Deposit Accounts (other than Excluded Accounts) that exist on the Closing Date, as of or prior to the Closing Date and (B) any Securities Accounts, Securities Entitlements or Deposit Accounts (other than Excluded Accounts) that are created or acquired after the Closing Date, as of or prior to the deposit or transfer of any such Securities Entitlements or funds, whether constituting moneys or investments, into such Securities Accounts or Deposit Accounts. In addition to the above exclusions for Excluded Accounts, the provisions of this Section 4.4.4(b) shall not apply with respect to any Investment Related Property to the extent constituting Excluded Collateral. In the case of any Investment Account, so long as no Event of Default has occurred and is continuing, the Collateral Agent agrees, subject to the terms of the Disbursement Agreement, the Credit Agreement and the other Loan Documents, that it shall not give any orders or instructions to any applicable depositary institution or securities intermediary concerning or directing the disposition, transfer, withdrawal, disbursement or investment of any funds in or credited to such Investment Account.

4.5 [Reserved].

4.6 Letter-of-Credit Rights.

(a) Representations and Warranties. Each Grantor hereby represents and warrants that:

(i) as of the Closing Date and each Credit Date, as of the immediately preceding Quarterly Update Date, all letters of credit in excess of $500,000 to which such Grantor has Letter-of-Credit Rights, or pursuant to which such Grantor is the beneficiary, are listed on Schedule 4.6; and

(ii) it has used commercially reasonable efforts to obtain the consent of each issuer of any letter of credit listed on Schedule 4.6 in excess of $500,000 to the assignment of the proceeds of such letter of credit to the Collateral Agent.

(b) Covenants and Agreements. Each Grantor hereby covenants and agrees that with respect to any letter of credit to which such Grantor has Letter-of-Credit Rights or pursuant to which such Grantor is the beneficiary, in excess of $500,000 hereafter arising it shall use commercially reasonable efforts to obtain the consent of the issuer thereof to the assignment of the proceeds of the letter of credit to the Collateral Agent and shall deliver to the Collateral Agent and the Administrative Agent a completed Pledge Supplement.

4.7 Intellectual Property.

(a) Representations and Warranties. Each Grantor hereby represents and warrants that, as of the Closing Date and each Credit Date, as of the immediately preceding Quarterly Update Date:

(i) Schedule 4.7 sets forth a true and complete list of (A) all United States registrations of and applications for Patents, Trademarks, Copyrights and Domain Names owned by each Grantor and (B) all Intellectual Property Licenses material to the business of such Grantor (other than such licenses related to gaming machines and other equipment), excluding licenses to commercially available off-the-shelf software;

(ii) it is the owner of the entire right, title, and interest in and to all Intellectual Property listed under its name on Schedule 4.7 and owns or has the valid right to use all other Intellectual Property used in or necessary to conduct its business, free and clear of all Liens, except for Permitted Liens and except to the extent not reasonably likely to have a Material Adverse Effect;

(iii) except to the extent not reasonably likely to have a Material Adverse Effect, all Intellectual Property set forth on Schedule 4.7 is subsisting and has not been adjudged invalid or unenforceable, in whole or in part, and such Grantor has performed all acts and

has paid all renewal, maintenance, and other fees and taxes required to maintain the Intellectual Property set forth on Schedule 4.7 in full force and effect;

(iv) except to the extent not reasonably likely to have a Material Adverse Effect, (A) all Intellectual Property set forth on Schedule 4.7 is valid and enforceable, (B) no holding, decision, or judgment has been rendered in any action or proceeding before any court or administrative authority challenging the validity of, such Grantor's right to register, or such Grantor's rights to own or use any Intellectual Property set forth on Schedule 4.7 and (C) no such action or proceeding is pending or, to such Grantor's knowledge, threatened;

(v) except to the extent not reasonably likely to have a Material Adverse Effect, such Grantor has been using appropriate statutory notice of registration in connection with its use of registered Trademarks, proper marking practices in connection with the use of Patents, and appropriate notice of copyright in connection with the publication of Copyrights, in each case, with respect to the Trademarks, Patents and Copyrights owned by such Grantor;

(vi) except to the extent not reasonably likely to have a Material Adverse Effect, (A) the conduct of such Grantor's business does not infringe upon or otherwise violate any Trademark, Patent, Copyright, Trade Secret or other Intellectual Property right owned by a third party and (B) no claim has been made that the use by such Grantor of any Intellectual Property owned or used by such Grantor violates the Intellectual Property rights of any third party;

(vii) except to the extent not reasonably likely to have a Material Adverse Effect, to such Grantor's knowledge, no third party is infringing upon or otherwise violating any rights in any Intellectual Property owned or used by such Grantor; and

(viii) except to the extent not reasonably likely to have a Material Adverse Effect, no settlement or consents, covenants not to sue, nonassertion assurances, or releases have been entered into by such Grantor or to which such Grantor is bound that adversely affect such Grantor's rights to own or use any Intellectual Property.

(b) Covenants and Agreements. Each Grantor hereby covenants and agrees as follows:

(i) except to the extent not material to its business as determined in good faith in such Grantor's reasonable business judgment, it shall not do any act or omit to do any act whereby any of the material Intellectual Property owned by such Grantor may lapse, or become abandoned, dedicated to the public, or unenforceable;

(ii) it shall take, at its own expense, commercially reasonable steps in the United States Patent and Trademark Office, the United States Copyright Office, or any foreign

counterpart of the foregoing, to pursue any application and maintain any registration of each Trademark, Patent, and Copyright owned by such Grantor and material to its business as determined in good faith in such Grantor's reasonable business judgment which is now or shall become included in the Intellectual Property included in the Collateral including, but not limited to, those items on Schedule 4.7(A), (C) and (E);

(iii) to the extent determined in good faith in such Grantor's reasonable business judgment that any Intellectual Property owned by or exclusively licensed to such Grantor that is material to its business is infringed, misappropriated, or diluted by a third party, such Grantor shall take commercially reasonable actions to protect its rights in such Intellectual Property including, but not limited to, the initiation of a suit for injunctive relief and to recover damages, as applicable;

(iv) it shall report to the Collateral Agent and the Administrative Agent (A) the filing of any application to register any Intellectual Property material to the conduct of its business with the United States Patent and Trademark Office or the United States Copyright Office (whether such application is filed by such Grantor or through any agent, employee, licensee, or designee thereof), (B) the acquisition of any such application or registration by purchase or assignment, and (C) the registration of any such Intellectual Property by any such office, in each case by executing and delivering to the Collateral Agent and the Administrative Agent a completed Pledge Supplement in each case of the preceding clauses (A), (B) and (C), no later than the Quarterly Update Date for the Fiscal Quarter during which such filing or registration was made; and

(v) it shall within a reasonable period of time upon the reasonable request of the Collateral Agent, execute and deliver to the Collateral Agent and the Administrative Agent at such Grantor's expense any document required to acknowledge, confirm, register, record, or perfect the Collateral Agent's interest in any part of the material Intellectual Property registered in the United States, whether now owned or hereafter acquired.

4.8 Commercial Tort Claims.

(a) Representations and Warranties. Each Grantor hereby represents and warrants, on the Closing Date, that Schedule 4.8 sets forth all Commercial Tort Claims of each Grantor in excess of $500,000 individually and $2,000,000 in the aggregate (across all Grantors); and

(b) Covenants and Agreements. Each Grantor hereby covenants and agrees that with respect to any Commercial Tort Claim of such Grantor hereafter arising it shall deliver to the Collateral Agent and the Administrative Agent a completed Pledge Supplement identifying such new Commercial Tort Claims in excess of $500,000 individually and $2,000,000 in the aggregate

(across all Grantors) no later than the Quarterly Update Date for the Fiscal Quarter during which such Grantor became aware of such Commercial Tort Claim.

4.9 Perfection of *De Minimis* Collateral. Notwithstanding anything to the contrary in this Section 4, the Grantors shall not be required to perfect any security interest granted to the Collateral Agent (including with respect to vehicles) as to which the Collateral Agent and the Administrative Agent have determined in writing in their sole discretion that the collateral value thereof is insufficient to justify the difficulty, time and/or expense of obtaining a perfected security interest therein.

SECTION 5. ACCESS; RIGHT OF INSPECTION AND FURTHER ASSURANCES; ADDITIONAL GRANTORS.

5.1 Further Assurances.

(a) Each Grantor agrees that from time to time, at the expense of such Grantor, it shall promptly execute and deliver all further instruments and documents, and take all further action, that may be necessary or, in the reasonable opinion of the Collateral Agent upon written notice to such Grantor, desirable, or that the Collateral Agent or the Administrative Agent may reasonably request in writing, in order to create and/or maintain the validity, perfection or priority of and protect any security interest granted or intended to be granted hereby or to enable the Collateral Agent during the continuance of an Event of Default to exercise and enforce its rights and remedies hereunder with respect to any Collateral. Without limiting the generality of the foregoing, each Grantor shall:

(i) file such financing or continuation statements, or amendments thereto, and execute and deliver such other agreements, instruments, endorsements, powers of attorney or notices, as may be necessary or, in the reasonable opinion of the Collateral Agent upon notice to such Grantor, desirable, or as the Collateral Agent or the Administrative Agent may reasonably request, in order to perfect and preserve the security interests granted or purported to be granted hereby;

(ii) take all actions commercially reasonable to ensure the recordation of appropriate evidence of the liens and security interest granted hereunder in the Intellectual Property included in the Collateral with the United States Patent and Trademark Office or the United States Copyright Office; and for the avoidance of doubt, nothing in this Agreement shall require any Grantor to make any filings or take any other actions to record or perfect the Collateral Agent's interest in any part of the Intellectual Property included in the Collateral outside of the United States;

(iii) at any reasonable time, upon written request by the Collateral Agent or the Administrative Agent, allow inspection of the Collateral by the Collateral Agent or the

Administrative Agent, or persons designated by the Collateral Agent or the Administrative Agent in each case to the extent permitted by (and subject to the limitations set forth in) the Credit Agreement; and

(iv) at the Collateral Agent's or the Administrative Agent's reasonable request, appear in and use commercially reasonable efforts to defend any action or proceeding that may adversely affect such Grantor's title to or the Collateral Agent's security interest in all or any part of the Collateral.

(b) Each Grantor hereby authorizes the Collateral Agent and the Administrative Agent to file a Record or Records, including, without limitation, financing or continuation statements, and amendments thereto, in any jurisdictions and with any filing offices as the Collateral Agent or the Administrative Agent may determine, in its sole discretion, are necessary or advisable to perfect the security interest granted to the Collateral Agent herein. Such financing statements may describe the Collateral in the same manner as described herein or may contain an indication or description of collateral that describes such property in any other manner as the Collateral Agent or the Administrative Agent may determine, in its sole discretion, is necessary, advisable or prudent to ensure the perfection of the security interest in the Collateral granted to the Collateral Agent herein, including, without limitation, describing such property as "all assets" or "all personal property, whether now owned or hereafter acquired." Each Grantor shall furnish to the Collateral Agent and the Administrative Agent from time to time (but not more than twice each year) statements and schedules further identifying and describing the Collateral (including disclosing any new applications to register with the United States Patent and Trademark Office or the United States Copyright Office any Intellectual Property included in the Collateral) and such other reports in connection with the Collateral as the Collateral Agent or the Administrative Agent may reasonably request, all in reasonable detail. Notwithstanding the foregoing or any other term or provision herein, the Collateral Agent shall be under no obligation whatsoever to prepare or file any financing or confirmation statements or record any documents or instruments in any public office at any time or times or otherwise to perfect or maintain the perfection of any security interest in the Collateral.

5.2 Additional Grantors. From time to time subsequent to the date hereof, additional Persons may become parties hereto as additional Grantors (each, an "**Additional Grantor**"), by executing a Joinder Agreement, together with a Pledge Supplement and any other attachments, all in form and substance reasonably satisfactory to the Collateral Agent and the Administrative Agent. Upon delivery of any such Joinder Agreement to the Collateral Agent and the Administrative Agent, notice of which is hereby waived by the other Grantors, each Additional Grantor shall be a Grantor and shall be as fully a party hereto as if such Additional Grantor were an original signatory hereto. Each Grantor expressly agrees that its obligations arising hereunder shall not be affected or diminished by the addition or release of any other Grantor hereunder, nor by any election of Collateral Agent or the Administrative Agent not to cause any other Subsidiary of the Borrower to become an

Additional Grantor hereunder. This Agreement shall be fully effective as to each Grantor that is or becomes a party hereto regardless of whether any other Person becomes or fails to become or ceases to be a Grantor hereunder.

SECTION 6. COLLATERAL AGENT APPOINTED ATTORNEY-IN-FACT.

6.1 Power of Attorney. Subject to Section 11.4, until the Termination Date, each Grantor hereby irrevocably appoints the Collateral Agent (such appointment being coupled with an interest) as such Grantor's attorney-in-fact, with full authority in the place and stead of such Grantor and in the name of such Grantor, the Collateral Agent or otherwise, from time to time in the Collateral Agent's discretion to take any action and to execute any instrument that the Collateral Agent may deem reasonably necessary or, upon notice to such Grantor, advisable to accomplish the purposes of this Agreement, including, without limitation, the following:

(a) upon the occurrence and during the continuance of any Event of Default, to obtain and/or adjust insurance required to be maintained by such Grantor or paid to the Collateral Agent pursuant to the Loan Documents;

(b) upon the occurrence and during the continuance of any Event of Default, to ask for, demand, collect, sue for, recover, compound, receive and give acquittance and receipts for moneys due or to become due under or in respect of any of the Collateral;

(c) upon the occurrence and during the continuance of any Event of Default, to receive, endorse and collect any drafts or other Instruments, Documents and Chattel Paper in connection with clause (b) above;

(d) upon the occurrence and during the continuance of any Event of Default, to file any claims or take any action or institute any proceedings that the Collateral Agent may deem necessary or desirable for the collection of any of the Collateral or otherwise to enforce the rights of the Collateral Agent with respect to any of the Collateral;

(e) to prepare and file any UCC financing statements against such Grantor as debtor;

(f) upon the occurrence and during the continuance of any Event of Default, to prepare, sign, and file any document which may be required by the United States Patent and Trademark Office, the United States Copyright Office or similar registrar in order to effect an absolute assignment of all right, title and interest in all registered Intellectual Property and any application for all such registrations, and record the same;

(g) to prepare for recordation in the United States Patent and Trademark Office or the United States Copyright Office (or any other intellectual property registry where recordation is, or

may become, legally required under applicable law to confirm, register, record, or perfect the Collateral Agent's interest in any part of the Intellectual Property included in the Collateral) appropriate evidence of the lien and security interest granted herein in the Intellectual Property in the name of such Grantor as debtor;

(h) upon the occurrence and during the continuance of any Event of Default, to take or cause to be taken all actions necessary to perform or comply or cause performance or compliance with the terms of this Agreement, including, without limitation, access to pay or discharge taxes or Liens (other than Permitted Liens) levied or placed upon or threatened against the Collateral, the legality or validity thereof and the amounts necessary to discharge the same to be determined by the Collateral Agent in its sole discretion, any such payments made by the Collateral Agent to become obligations of such Grantor to the Collateral Agent, due and payable immediately without demand;

(i) upon the occurrence and during the continuance of any Event of Default, generally to sell, transfer, pledge, make any agreement with respect to or otherwise deal with any of the Collateral as fully and completely as though the Collateral Agent were the absolute owner thereof for all purposes; and

(j) to do, at the Collateral Agent's option and such Grantor's expense, at any time or from time to time, all acts and things that the Collateral Agent deems reasonably necessary to protect, preserve or, upon the occurrence and during the continuation of any Event of Default, realize upon the Collateral and the Collateral Agent's security interest therein in order to effect the intent of this Agreement.

6.2 No Duty on the Part of Collateral Agent or Secured Parties. The powers conferred on the Collateral Agent hereunder are solely to protect the interests of the Secured Parties in the Collateral and shall not impose any duty upon the Collateral Agent or any Secured Party to exercise any such powers. The Collateral Agent and the Secured Parties shall be accountable only for amounts that they actually receive as a result of the exercise of such powers, and neither they nor any of their officers, directors, employees or agents shall be responsible to any Grantor for any act or failure to act hereunder, except for their own gross negligence or willful misconduct (as determined by a court of competent jurisdiction by final and nonappealable judgment).

SECTION 7. REMEDIES.

7.1 Generally.

(a) If any Event of Default shall have occurred and be continuing, subject to Section 11.4, the Collateral Agent may exercise in respect of the Collateral, in addition to all other rights and remedies provided for herein or otherwise available to it at law or in equity, all the rights and

remedies of the Collateral Agent on default under the UCC (whether or not the UCC applies to the affected Collateral) to collect, enforce or satisfy any Secured Obligations then owing, whether by acceleration or otherwise, and also may pursue any of the following separately, successively or simultaneously:

(i) require any Grantor to, and each such Grantor to the same extent hereby agrees that it shall, at its expense and promptly upon request of the Collateral Agent forthwith, assemble all or part of the Collateral as directed by the Collateral Agent and make it available to the Collateral Agent at a place to be designated by the Collateral Agent that is reasonably convenient to both parties;

(ii) enter onto the property where any Collateral is located and take possession thereof with or without judicial process;

(iii) prior to the disposition of the Collateral, store, process, repair or recondition the Collateral or otherwise prepare the Collateral for disposition in any manner to the extent the Collateral Agent deems appropriate; and

(iv) without notice except as specified below or under the UCC, sell, assign, lease, license (on an exclusive or nonexclusive basis) or otherwise dispose of the Collateral or any part thereof in one or more parcels at public or private sale, at any of the Collateral Agent's offices or elsewhere, for cash, on credit or for future delivery, at such time or times and at such price or prices and upon such other terms as the Collateral Agent may deem commercially reasonable.

(b) The Collateral Agent or any Secured Party may be the purchaser of any or all of the Collateral at any public or private sale (to the extent the portion of the Collateral being privately sold is of a kind that is customarily sold on a recognized market or the subject of widely distributed standard price quotations) in accordance with the UCC and the Collateral Agent, as collateral agent under the Credit Agreement for the benefit of the Secured Parties shall be entitled, for the purpose of bidding and making settlement or payment of the purchase price for all or any portion of the Collateral sold at any such sale made in accordance with the UCC, to use and apply any of the Secured Obligations as a credit on account of the purchase price for any Collateral payable by the Collateral Agent at such sale. Each purchaser at any such sale shall hold the property sold absolutely free from any claim or right on the part of any Grantor, and each Grantor hereby waives (to the extent permitted by applicable law) all rights of redemption, stay and/or appraisal which it now has or may at any time in the future have under any rule of law or statute now existing or hereafter enacted. Each Grantor agrees that, to the extent notice of sale shall be required by law or this Agreement, at least ten (10) days' notice to such Grantor of the time and place of any public sale or the time after which any private sale is to be made shall constitute reasonable notification. The

Collateral Agent shall not be obligated to make any sale of Collateral regardless of notice of sale having been given. The Collateral Agent may adjourn any public or private sale from time to time by announcement at the time and place fixed therefor, and such sale may, without further notice, be made at the time and place to which it was so adjourned. Each Grantor agrees that it would not be commercially unreasonable for the Collateral Agent to dispose of the Collateral or any portion thereof by using Internet sites that provide for the auction of assets of the types included in the Collateral or that have the reasonable capability of doing so, or that match buyers and sellers of assets. Each Grantor hereby waives any claims against the Collateral Agent arising by reason of the fact that the price at which any Collateral may have been sold at such a private sale was less than the price which might have been obtained at a public sale, even if the Collateral Agent accepts the first offer received and does not offer such Collateral to more than one offeree so long as such process is commercially reasonable. If the proceeds of any sale or other disposition of the Collateral are insufficient to pay all the Secured Obligations, each Grantor shall be liable for the deficiency and the fees of any attorneys employed by the Collateral Agent to collect such deficiency. Each Grantor further agrees that a breach of any of the covenants contained in this Section 7.1(b) will cause irreparable injury to the Collateral Agent, that the Collateral Agent has no adequate remedy at law in respect of such breach and, as a consequence, that each and every covenant contained in this Section shall be specifically enforceable against such Grantor, and such Grantor hereby waives and agrees not to assert any defenses (other than defense of payment or performance) against an action for specific performance of such covenants except for a defense that no default has occurred giving rise to the Secured Obligations becoming due and payable prior to their stated maturities. Nothing in this Section 7.1(b) shall in any way alter the rights of the Collateral Agent hereunder.

(c) The Collateral Agent may sell the Collateral without giving any warranties as to the Collateral. The Collateral Agent may specifically disclaim or modify any warranties of title or the like. This procedure will not be considered to adversely affect the commercial reasonableness of any sale of the Collateral.

(d) The Collateral Agent shall have no obligation to marshal any of the Collateral.

(e) Nothing in this Agreement waives any duty of the Collateral Agent or any right of the Grantors which cannot be waived under Section 9-602 of the UCC or other mandatory provisions of applicable law.

(f) In furtherance of the foregoing, in the event of a foreclosure, deed in lieu of foreclosure or other similar transfer of the Project to the Collateral Agent or its designee, the Loan Parties shall, to the extent required by the Collateral Agent, use commercially reasonable efforts to assist the Collateral Agent or its designee in obtaining all Gaming Licenses and other governmental approvals necessary to conduct gaming operations at the Project. Following a foreclosure, deed in lieu of foreclosure or other similar transfer of the Project to the Collateral Agent or its designee,

subject to receipt of requisite approvals from any applicable Gaming Authority, the Loan Parties shall use commercially reasonable efforts to assist with the transition of the gaming at the Project to any new gaming operator (including, without limitation, the Collateral Agent or its designee).

7.2 Application of Proceeds. All proceeds received by the Collateral Agent in respect of any sale, any collection from, or other realization upon all or any part of the Collateral and (to the extent that the application thereof is not otherwise provided for in any other Loan Document) all other cash or proceeds received by the Collateral Agent for the benefit of the Secured Parties shall be applied in full or in part by the Collateral Agent or the Administrative Agent against the Secured Obligations in accordance with Section 7.02 of the Credit Agreement. For the avoidance of doubt, notwithstanding any other provision of any Loan Document to the contrary, no such payment received from any Grantor (other than the Borrower) that is not a Qualified ECP Guarantor shall be applied by the Administrative Agent or any other Secured Party to the payment of any Excluded Swap Obligations.

7.3 Sales on Credit. If the Collateral Agent sells any of the Collateral upon credit, the applicable Grantor will be credited only with payments actually made by purchaser and received by the Collateral Agent and applied to indebtedness of the purchaser. In the event the purchaser fails to pay for the Collateral, the Collateral Agent may resell the Collateral and such Grantor shall be credited with cash proceeds of the sale actually received by the Collateral Agent pursuant to the application of such proceeds under Section 7.02 of the Credit Agreement.

7.4 Investment Accounts. If any Event of Default shall have occurred and be continuing, the Collateral Agent may apply the balance (or portion thereof) from any Investment Account or instruct the bank or other financial institution at which any Investment Account is maintained to pay the balance (or portion thereof) of any Investment Account to or for the benefit of the Collateral Agent.

7.5 Investment Related Property. Each Grantor recognizes that, by reason of certain prohibitions contained in the Securities Act and applicable state securities laws, the Collateral Agent may be compelled, with respect to any sale of all or any part of the Investment Related Property conducted without prior registration or qualification of such Investment Related Property under the Securities Act and/or such state securities laws, to limit purchasers to those who will agree, among other things, to acquire the Investment Related Property for their own account, for investment and not with a view to the distribution or resale thereof. Each Grantor acknowledges that any such private sale may be at prices and on terms less favorable than those obtainable through a public sale without such restrictions (including a public offering made pursuant to a registration statement under the Securities Act) and, notwithstanding such circumstances, to the extent permitted by applicable law, each Grantor agrees that any such private sale, to the extent permitted by applicable law, shall be deemed to have been made in a commercially reasonable manner and that the Collateral

Agent shall have no obligation to engage in public sales and no obligation to delay the sale of any Investment Related Property for the period of time necessary to permit the issuer thereof to register it for a form of public sale requiring registration under the Securities Act or under applicable state securities laws, even if such issuer would, or should, agree to so register it. If the Collateral Agent determines to exercise its right to sell any or all of the Investment Related Property after the occurrence and during the continuation of an Event of Default, upon written request, each Grantor shall and shall use commercially reasonable efforts to cause each issuer of any Pledged Stock to be sold hereunder, each partnership and each limited liability company from time to time to furnish to the Collateral Agent all such information as the Collateral Agent may request in order to determine the number and nature of interest, shares or other instruments included in the Investment Related Property which may be sold by the Collateral Agent in exempt transactions under the Securities Act and the rules and regulations of the Securities and Exchange Commission thereunder, as the same are from time to time in effect.

7.6 Intellectual Property.

(a) Anything contained herein to the contrary notwithstanding, upon the occurrence and during the continuation of an Event of Default:

(i) the Collateral Agent shall have the right (but not the obligation) to bring suit or otherwise commence any action or proceeding in the name of any Grantor, the Collateral Agent or otherwise, in the Collateral Agent's sole discretion, to enforce any Intellectual Property that constitutes Collateral, in which event such Grantor shall, at the request of the Collateral Agent, do any and all lawful acts and execute any and all documents required by the Collateral Agent in aid of such enforcement, and, to the extent that the Collateral Agent shall elect not to bring suit to enforce any Intellectual Property that constitutes Collateral as provided in this Section 7.6, each Grantor agrees to use reasonable measures, whether by action, suit, proceeding or otherwise, to prevent the infringement or other violation of any of such Grantor's rights in the Intellectual Property that constitutes Collateral by others;

(ii) upon written demand from the Collateral Agent or exercise of its rights under Section 6.1(f), each Grantor shall grant, assign, convey or otherwise transfer to the Collateral Agent or the Collateral Agent's designee all of such Grantor's right, title and interest in and to the Intellectual Property that constitutes Collateral and shall execute and deliver to the Collateral Agent such documents as are necessary or appropriate to carry out the intent and purposes of this Agreement which may include the right of Collateral Agent to (i) take and use or sell the Intellectual Property; and (ii) take and use or sell the goodwill of such Grantor's business symbolized by the Trademarks and the right to carry on the business and use the assets of such Grantor in connection with which the Trademarks or Domain Names have been used;

(iii) each Grantor agrees that such an assignment and/or recording shall be applied to reduce the Secured Obligations outstanding only to the extent that the Collateral Agent (or any Secured Party) receives cash proceeds in respect of the sale of, or other realization upon, the Intellectual Property that constitutes Collateral; and

(iv) upon any such assignment, each Grantor shall execute such further documents that the Collateral Agent may reasonably request to further confirm this and to transfer ownership of Intellectual Property and registrations and any pending applications in the United States Copyright Office, United States Patent and Trademark Office, equivalent office in a state of the United States or applicable Domain Name registrar to the Collateral Agent; and

(v) the Collateral Agent shall have the right to notify, or require each Grantor to notify, any obligors with respect to amounts due or to become due to such Grantor in respect of the Intellectual Property that constitutes Collateral, of the existence of the security interest created herein, to direct such obligors to make payment of all such amounts directly to the Collateral Agent, and, upon such notification and at the expense of such Grantor, to enforce collection of any such amounts and to adjust, settle or compromise the amount or payment thereof, in the same manner and to the same extent as such Grantor might have done.

(b) If (i) an Event of Default shall have occurred and, by reason of cure, waiver, modification, amendment or otherwise, no longer be continuing; (ii) no other Event of Default shall have occurred and be continuing; (iii) an assignment or other transfer to the Collateral Agent of any rights, title and interests in and to the Intellectual Property that constitutes Collateral shall have been previously made; and (iv) the Secured Obligations shall not have become immediately due and payable, then upon the written request of any Grantor, the Collateral Agent shall promptly execute and deliver to such Grantor, at such Grantor's sole cost and expense, such assignments or other transfer documents as may be necessary to reassign to such Grantor any such rights, title and interests as may have been assigned to the Collateral Agent as aforesaid, subject to any disposition thereof that may have been made by the Collateral Agent; provided that, after giving effect to such reassignment, the Collateral Agent's security interest granted pursuant hereto, as well as all other rights and remedies of the Collateral Agent granted hereunder, shall continue to be in full force and effect; and provided, further, the rights, title and interests so reassigned shall be free and clear of any other Liens granted by or on behalf of the Collateral Agent and the Secured Parties.

(c) Solely for the purpose of enabling the Collateral Agent to exercise rights and remedies under this Section 7.6 and at such time as the Collateral Agent shall be lawfully entitled to exercise such rights and remedies, each Grantor hereby grants to the Collateral Agent, to the extent it has the right to do so, an irrevocable, nonexclusive license (exercisable without payment of royalty or other compensation to such Grantor), subject, in the case of Trademarks, to sufficient rights to

quality control and inspection in favor of such Grantor to avoid the risk of invalidation of said Trademarks, to use, operate under, license, or sublicense any Intellectual Property that constitutes Collateral now owned or hereafter acquired by such Grantor, and wherever the same may be located.

7.7 Cash Proceeds. In addition to the rights of the Collateral Agent specified in Section 4.3 with respect to payments of Receivables, during the continuance of an Event of Default and following a Grantor's receipt of notice from the Collateral Agent of its intention to exercise its rights under this Section 7.7, all proceeds of any Collateral received by any Grantor consisting of cash, checks and other non-cash items (collectively, "**Cash Proceeds**") shall be held by such Grantor in trust for the Collateral Agent, segregated from other funds of such Grantor, and shall, forthwith upon receipt by such Grantor, be turned over to the Collateral Agent in the exact form received by such Grantor (duly indorsed by such Grantor to the Collateral Agent, if required) and held by the Collateral Agent in an Investment Account (it being understood that each Grantor agrees to promptly comply with any reasonable request of the Collateral Agent to establish or enter into a Control Agreement with respect to such an Investment Account). Any Cash Proceeds received by the Collateral Agent (whether from a Grantor or otherwise) may, in the sole discretion of the Collateral Agent, (A) be held by the Collateral Agent for the ratable benefit of the Secured Parties, as collateral security for the Secured Obligations (whether matured or unmatured) and/or (B) be applied then or at any time thereafter by the Collateral Agent against the Secured Obligations then due and owing.

SECTION 8. COLLATERAL AGENT.

The Collateral Agent has been appointed to act as Collateral Agent hereunder by the Secured Parties. The Collateral Agent shall be obligated, and shall have the right hereunder, to make demands, to give notices, to exercise or refrain from exercising any rights or remedies, and to take or refrain from taking any action (including, without limitation, the release or substitution of Collateral), solely in accordance with this Agreement and the other Loan Documents. In furtherance of the foregoing provisions of this Section 8, each Secured Party, by its acceptance of the benefits hereof, agrees that it shall have no right individually to realize upon any of the Collateral hereunder, it being understood and agreed by such Secured Party that all rights and remedies hereunder may be exercised solely by the Collateral Agent for the benefit of the Secured Parties in accordance with the terms of this Section 8. The Collateral Agent may resign or be removed in accordance with Section 8.08 of the Credit Agreement. After the Collateral Agent's resignation thereunder as the Collateral Agent, the provisions of this Agreement shall inure to its benefit as to any actions taken or omitted to be taken by it under this Agreement while it was the Collateral Agent hereunder.

SECTION 9. CONTINUING SECURITY INTEREST; TRANSFER OF LOANS.

This Agreement shall create a continuing security interest in the Collateral and shall remain in full force and effect until the Termination Date and be binding upon each Grantor and its successors and assigns, and inure, together with the rights and remedies of the Collateral Agent hereunder, to the benefit of the Collateral Agent and its successors, transferees and assigns. No Grantor shall assign or delegate any of its rights or duties hereunder without the prior written consent

of the Administrative Agent (acting with the consent of the requisite percentage of Lenders pursuant to the Credit Agreement), and any attempted assignment or delegation by a Grantor without such consent shall be null and void. Without limiting the generality of the foregoing, but subject to the terms of the Credit Agreement and the other Loan Documents, any Lender may assign or otherwise transfer any Loans held by it to any other Person, and such other Person shall thereupon become vested with all the benefits in respect thereof granted to the Lenders herein or otherwise. Upon the Termination Date, the security interest granted hereby shall automatically terminate hereunder and of record and all rights to the Collateral shall revert to the applicable Grantors. Upon any disposition by the Borrower or any other Loan Party of any assets or property that is permitted under the Loan Documents, the security interest granted hereby in such assets or property shall automatically terminate hereunder and of record and all rights to the Collateral to the extent of such assets or property shall revert to the applicable Grantors. Upon any such termination in the prior two sentences, the Collateral Agent shall, at the Grantors' expense (and without recourse to, and without any representation or warranty by, the Collateral Agent), execute and deliver to any Grantor such documents as such Grantor shall reasonably request to evidence such termination and promptly return any applicable possessory Collateral to the applicable Grantors.

SECTION 10. STANDARD OF CARE; COLLATERAL AGENT MAY PERFORM.

The powers conferred on the Collateral Agent hereunder are solely to protect its interest in the Collateral and shall not impose any duty upon it to exercise any such powers. Except for the exercise of reasonable care in the custody of any Collateral in its possession and the accounting for moneys actually received by it hereunder, the Collateral Agent shall have no duty as to any Collateral or as to the taking of any necessary steps to preserve rights against prior parties or any other rights pertaining to any Collateral. The Collateral Agent shall be deemed to have exercised reasonable care in the custody and preservation of Collateral in its possession if such Collateral is accorded treatment reasonably equal to that which the Collateral Agent accords its own property. Neither the Collateral Agent nor any of its directors, officers, employees or agents shall be liable for failure to demand, collect or realize upon all or any part of the Collateral or for any delay in doing so or shall be under any obligation to sell or otherwise dispose of any Collateral upon the request of any Grantor or otherwise. If an Event of Default occurs and is continuing and any Grantor fails to perform any agreement contained herein, the Collateral Agent may itself perform, or cause performance of, such agreement, and the expenses of the Collateral Agent incurred in connection therewith shall be payable by each Grantor under Section 9.05 of the Credit Agreement and any analogous provision in any other Loan Document.

SECTION 11. MISCELLANEOUS.

11.1 General. Any notice, request or demand required or permitted to be given under this Agreement shall be given in accordance with Section 9.01 of the Credit Agreement; provided, that any such notice, request or demand to a Grantor shall be addressed to such Grantor at its notice address set forth on Schedule 4.1. No failure or delay on the part of the Collateral Agent in the exercise of any power, right or privilege hereunder or under any other Loan Document shall impair such power, right or privilege or be construed to be a waiver of any default or acquiescence therein,

nor shall any single or partial exercise of any such power, right or privilege preclude other or further exercise thereof or of any other power, right or privilege. All rights and remedies existing under this Agreement and the other Loan Documents are cumulative to, and not exclusive of, any rights or remedies otherwise available. In case any provision in or obligation under this Agreement shall be invalid, illegal or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations, or of such provision or obligation in any other jurisdiction, shall not in any way be affected or impaired thereby. All covenants hereunder shall be given independent effect so that if a particular action or condition is not permitted by any of such covenants, the fact that it would be permitted by an exception to, or would otherwise be within the limitations of, another covenant shall not avoid the occurrence of a Default or an Event of Default if such action is taken or condition exists. This Agreement shall be binding upon and inure to the benefit of the Collateral Agent (for itself and for the benefit of the other Secured Parties) and the Grantors and their respective successors and assigns. No Grantor shall, without the prior written consent of the Administrative Agent given in accordance with the Credit Agreement and the other Loan Documents, assign any right, duty or obligation hereunder. This Agreement and the other Loan Documents embody the entire agreement and understanding between the Grantors, the Administrative Agent and the Collateral Agent and supersede all prior agreements and understandings between such parties relating to the subject matter hereof and thereof. Accordingly, the Loan Documents may not be contradicted by evidence of prior, contemporaneous or subsequent oral agreements of the parties. There are no unwritten or oral agreements between the parties. This Agreement may be executed in counterparts (and by different parties hereto on different counterparts), each of which shall be deemed an original but all of which when taken together shall constitute a single contract. Delivery of an executed signature page to this Agreement by facsimile transmission, "pdf" or similar electronic copy shall be as effective as delivery of a manually signed counterpart of this Agreement. Any party hereto may request an original counterpart of any party delivering such electronic counterpart. A set of the copies of this Agreement signed by all the parties shall be lodged with the Borrower and the Administrative Agent.

11.2 Waivers. Each Grantor hereby waives, for the benefit of the Secured Parties:

(a) any right to require any Secured Party, as a condition of payment or performance by such Grantor, to (i) proceed against the Borrower, any other Grantor or any other Person; (ii) proceed against or exhaust any security held from the Borrower, any other Grantor or any other Person; (iii) proceed against or have resort to any balance of any deposit account or credit on the books of any Secured Party in favor of the Borrower, any such other Grantor, or any other Person; or (iv) pursue any other remedy in the power of any Secured Party whatsoever;

(b) any defense (other than the defense of payment) arising by reason of the incapacity, lack of authority or any disability or other defense of the Borrower or any other Grantor including any defense based on or arising out of the lack of validity or the unenforceability of any of the

Secured Obligations or any agreement or instrument relating thereto or by reason of the cessation of the liability of the Borrower or any other Grantor from any cause other than payment in full of all Secured Obligations;

(c) any defense based upon any statute or rule of law which provides that the obligation of a surety must be neither larger in amount nor in other respects more burdensome than that of the principal;

(d) any defense based upon any Secured Party's administrative errors or omissions, except behavior which amounts to gross negligence or willful misconduct (as determined by a court of competent jurisdiction in a final and non-appealable decision);

(e) (i) any principles or provisions of law, statutory or otherwise, which are or might be in conflict with the terms of this Agreement and any legal or equitable discharge of such Grantor's obligations hereunder; (ii) the benefit of any statute of limitations affecting such Grantor's liability hereunder or the enforcement hereof; (iii) any rights to set-offs, recoupments and counterclaims; and (iv) promptness, diligence and any requirement that any Secured Party protect, secure, perfect or insure any security interest or lien or any property subject thereto;

(f) notices, demands, presentments, protests, notices of protest, notices of dishonor and notices of any action or inaction, including acceptance of this Agreement, notices of default under the Loan Documents, the Specified Hedging Agreements, the Specified Cash Management Agreements or any agreement or instrument related thereto, notices of any renewal, extension or modification of the Secured Obligations or any agreement related thereto and notices of any extension of credit to the Borrower or any other Grantor;

(g) any defenses (other than the defense of payment) or benefits that may be derived from or afforded by law which limit the liability of or exonerate guarantors or sureties, or which may conflict with the terms of this Agreement;

(h) to the extent such waiver is not prohibited by Section 9-602 of the UCC, any defense based upon any Secured Party's failure to mitigate damages; and

(i) all rights to insist upon, plead or in any manner claim or take the benefit or advantage of any appraisal, valuation, stay, extension, marshaling of assets, redemption or similar law, or exemption, whether now or hereafter in force, which may delay, prevent or otherwise affect the performance by any Grantor of its obligations under, or the enforcement by any Secured Party of, this Agreement.

11.3 Governing Law. THIS AGREEMENT AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER SHALL BE CONSTRUED IN ACCORDANCE WITH, AND

GOVERNED BY, THE LAWS OF THE STATE OF NEW YORK (WITHOUT REGARD TO CONFLICT OF LAWS PROVISIONS THAT WOULD RESULT IN THE APPLICATION OF LAWS OTHER THAN THE LAWS OF THE STATE OF NEW YORK (OTHER THAN ANY MANDATORY PROVISIONS OF THE UCC RELATING TO THE LAW GOVERNING PERFECTION AND THE EFFECT OF PERFECTION OF THE SECURITY INTERESTS GRANTED HEREUNDER)).

11.4 Regulatory Matters. Notwithstanding anything to the contrary set forth in this Agreement or any other Loan Document, the Collateral Agent, on behalf of the Secured Parties, acknowledges and agrees that its rights, remedies and powers under this Agreement (including its exercise of remedial rights upon Collateral and voting of equity interests in (or otherwise taking control of) Persons licensed by the Gaming Authorities and/or under Gaming Laws), may be exercised only to the extent that (i) the exercise thereof does not violate any applicable laws, rules and regulations of the Gaming Authorities, including Gaming Laws, and (ii) all necessary approvals, licenses and consents from the Gaming Authorities required in connection therewith are obtained. Notwithstanding any other provision of this Agreement, the Grantors expressly authorize the Collateral Agent and the other Secured Parties to cooperate with the applicable Gaming Authorities in connection with the administration of their regulatory jurisdiction over each Grantor and the Borrower, including, without limitation, to the extent not inconsistent with the internal policies of such Collateral Agent or Secured Party and any applicable legal or regulatory restrictions, the provision of such documents or other information as may be requested by any such Gaming Authorities relating to the Collateral Agent, any Grantor or the Borrower, or the Loan Documents. The parties acknowledge that the provisions of this Section 11.4 shall not be for the benefit of any Grantor, the Borrower or any other Person.

11.5 Updates to Disclosure Schedules. Upon delivery of any duly completed and executed Pledge Supplement in accordance with the terms hereof, the applicable Schedules hereto shall be deemed to have been updated as provided therein. Except as otherwise set forth herein, the Grantors may execute at any time and deliver to the Collateral Agent and the Administrative Agent a completed and executed Pledge Supplement.

11.6 Consent to Jurisdiction and Waiver of Jury Trial. **THE PROVISIONS OF (A) IN THE CASE OF THE BORROWER, THE CREDIT AGREEMENT AND THE OTHER LOAN DOCUMENTS AND (B) IN THE CASE OF EACH OTHER GRANTOR, THE SUBSIDIARY GUARANTY UNDER THE HEADINGS "CONSENT TO JURISDICTION" AND "WAIVER OF JURY TRIAL" ARE INCORPORATED HEREIN BY THIS REFERENCE AND SUCH INCORPORATION SHALL SURVIVE ANY TERMINATION OF THE CREDIT AGREEMENT, THE OTHER LOAN DOCUMENTS OR THE SUBSIDIARY GUARANTY.**

11.7 Reinstatement. This Agreement shall continue to be effective or be reinstated, as the case may be, if at any time any amount received by the Collateral Agent or any other Secured Party hereunder or pursuant hereto is rescinded or must otherwise be restored or returned by the Collateral Agent or such Secured Party upon the occurrence of any proceeding, voluntary or involuntary, involving the bankruptcy, reorganization, insolvency, receivership, liquidation or other similar arrangement affecting any Grantor, the Borrower or any Subsidiary of the Borrower or upon the appointment of any intervenor or conservator of, or trustee or similar official for, any Grantor, the Borrower or any Subsidiary of the Borrower or any substantial part of any Grantor's, the Borrower's or any Subsidiary of the Borrower's assets, or upon the entry of an order by any court avoiding the payment of such amount, or otherwise, all as though such payments had not been made.

11.8 Amendments. Subject to the last sentence of Section 8.02 of the Credit Agreement, no waiver, amendment, modification or termination of any provision of this Agreement, or consent to any departure by the Grantors therefrom, shall in any event be effective without the prior written consent of each Grantor party hereto and either (x) the Required Lenders or (y) the Collateral Agent (acting at the direction of the Required Lenders).

11.9 Intercreditor Agreement. All rights and remedies of the Collateral Agent hereunder are, as between the Administrative Agents (as defined in the Intercreditor Agreement) and the Collateral Agents (as defined in the Intercreditor Agreement), subject to the terms of the Intercreditor Agreement. This provision is for the benefit of, and may be enforced exclusively by, the Administrative Agents and the Collateral Agents only. For the avoidance of doubt, this provision is not for the benefit of any Grantor and may not, under any circumstances, be enforced by any Grantor.

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, each Grantor and the Collateral Agent have caused this Agreement to be duly executed and delivered by their respective officers thereunto duly authorized as of the date first written above.

MONTREIGN OPERATING COMPANY, LLC,
a New York limited liability company

By:	/s/ Joseph A. D'Amato
Name:	Joseph A. D'Amato
Title:	President

EMPIRE RESORTS REAL ESTATE I, LLC,
a New York limited liability company

By:	/s/ Joseph A. D'Amato
Name:	Joseph A. D'Amato
Title:	President

EMPIRE RESORTS REAL ESTATE II, LLC,
a New York limited liability company

By:	/s/ Joseph A. D'Amato
Name:	Joseph A. D'Amato
Title:	President

CREDIT SUISSE AG,
CAYMAN ISLANDS BRANCH,
as Collateral Agent

By:	/s/ Robert Hetu
Name:	Robert Hetu
Title:	Authorized Signatory

By:	/s/ Whitney Gaston
Name:	Whitney Gaston
Title:	Authorized Signatory

EXHIBIT A to EXHIBIT B to Pledge and Security Agreement

EXHIBIT 10.48

EQUITY PLEDGE AGREEMENT

dated as of January 24, 2017

by

MONTREIGN HOLDING COMPANY, LLC,
as Pledgor

and

CREDIT SUISSE AG, CAYMAN ISLANDS BRANCH,
as Collateral Agent

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-EQUITY PLEDGE AGREEMENT

This EQUITY PLEDGE AGREEMENT (as amended, amended and restated, supplemented or otherwise modified from time to time, this "**Agreement**"), dated as of January 24, 2017, is entered into by and between MONTREIGN HOLDING COMPANY, LLC, a New York limited liability company (the " **Pledgor**"), and CREDIT SUISSE AG, CAYMAN ISLANDS BRANCH, in its capacity as collateral agent for the benefit of the Secured Parties (together with its successors and assigns in such capacity, the "**Collateral Agent**").

RECITALS

A. Montreign Operating Company, LLC, a New York limited liability company (the " **Borrower**"), has entered into that certain Building Term Loan Agreement, dated as of the date hereof (as amended, amended and restated, supplemented or otherwise modified from time to time, the "**Credit Agreement**"), by and among the Borrower, the banks, financial institutions and other entities from time to time party thereto in the capacity of lenders (the "**Lenders**"), and Credit Suisse AG, Cayman Islands Branch, as administrative agent (together with its successors and assigns in such capacity, the "**Administrative Agent**").

B. Subject to the terms and conditions of the Credit Agreement, certain Loan Parties may enter into one or more Specified Hedging Agreements with one or more counterparties to a Specified Hedging Agreement.

C. Subject to the terms and conditions of the Credit Agreement, certain Loan Parties may enter into one or more Specified Cash Management Agreements with one or more counterparties to a Specified Cash Management Agreement.

D. The Pledgor owns 100% of the membership interests of the Borrower, and the Pledgor will receive substantial benefit from the making of the Loans to the Borrower pursuant to the terms of the Credit Agreement and the other Loan Documents.

E. It is a condition precedent to the effectiveness of the Credit Agreement and the other Loan Documents that this Agreement be executed and delivered by the Pledgor.

AGREEMENT

NOW, THEREFORE, in consideration of the premises herein and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Pledgor and Collateral Agent, for the benefit of the Secured Parties, hereby agree as follows:

SECTION 1. DEFINITIONS; RULES OF CONSTRUCTION

1.1 Definitions. The following terms shall have the following respective meanings:

"**Administrative Agent**" shall have the meaning given in the recitals.

"**Agreement**" shall have the meaning given in the preamble.

"**Bankruptcy Code**" shall mean Title 11 of the United States Code entitled "Bankruptcy" as now and hereafter in effect, or any successor statute.

"**Borrower**" shall have the meaning given in the recitals.

"**Borrower LLC Agreement**" shall mean the Amended and Restated Operating Agreement of Montreign Operating Company, LLC (a New York Limited Liability Company), dated as of November 2, 2016, as amended, amended and restated, supplemented or otherwise modified from time to time in accordance with the terms hereof and thereof.

"**Collateral Agent**" shall have the meaning given in the preamble.

"**Credit Agreement**" shall have the meaning given in the recitals.

"**Financing Statements**" shall mean all financing statements, recordings, filings or other instruments of registration necessary or appropriate to perfect a security interest or Lien by filing in any appropriate filing or recording office in accordance with the UCC or any other relevant applicable law.

"**Governing Agreements**" shall mean, collectively, the Certificate of Formation of the Borrower and the Borrower LLC Agreement.

"**Lenders**" shall have the meaning given in the recitals.

"**Membership Interests**" shall have the meaning ascribed thereto in Section 2.1(a).

"**Permitted Liens**" shall mean Liens of the types described in clauses (a), (b), (s), (x) and (bb) of Section 6.02 of the Credit Agreement; provided that for purposes of this definition any reference in such clauses to "Loan Party" or "Loan Parties" shall mean and include the Pledgor.

"**Pledged Collateral**" shall have the meaning ascribed thereto in Section 2.1(a).

"**Pledgor**" shall have the meaning given in the preamble.

"**Secured Obligations**" shall have the meaning ascribed thereto in Section 2.1(a).

"**Termination Date**" shall mean the date on which all Secured Obligations have been "paid in full" as such term is defined in the Credit Agreement.

"**UCC**" shall mean the Uniform Commercial Code as the same may, from time to time, be in effect in the State of New York; provided, however, in the event that, by reason of mandatory provisions of law, any or all of the perfection or priority of the security interest in any Pledged Collateral is governed by the Uniform Commercial Code as in effect in a jurisdiction other than the State of New York, the term "UCC" shall mean the Uniform Commercial Code as in effect in such other jurisdiction for purposes of the provisions hereof relating to such perfection or priority and for purposes of definitions related to such provisions.

Capitalized terms used but not otherwise defined herein shall have the meanings assigned to such terms in the Credit Agreement.

1.2 Rules of Construction. Except as otherwise provided herein or unless the context otherwise requires, the rules of construction set forth in Sections 1.02 through 1.08 of the Credit Agreement, including with respect to the meaning of the expressions "payment in full," "paid in full" and any other similar terms or phrases, shall be applicable to this Agreement *mutatis mutandis*. If any conflict or inconsistency exists between this Agreement and the Credit Agreement, the Credit Agreement shall govern. All references herein to provisions of the UCC shall include all successor provisions under any subsequent version or amendment to any Article of the UCC. Except as expressly specified otherwise herein, any reference herein to any Exhibit or Schedule to this Agreement shall be deemed to refer to such Exhibit or Schedule as amended or supplemented from time to time.

SECTION 2. PLEDGE

2.1 Pledged Collateral.

(a) Subject to Section 2.1(c), the Pledgor hereby irrevocably and unconditionally guarantees to the Collateral Agent, for the ratable benefit of the Secured Parties, the prompt and complete payment and performance in full when due, whether at stated maturity, by required prepayment, declaration, acceleration, demand or otherwise (including the payment of amounts which would become due but for the operation of the automatic stay under Section 362(a) of the Bankruptcy Code), of all of the Obligations, whether now existing or hereafter arising and howsoever evidenced (the "**Secured Obligations**"). Notwithstanding any provision hereof or in any other Loan Document to the contrary, the Secured Obligations of the Pledgor shall not include any Excluded Swap Obligations (as defined in the Pledge and Security Agreement). The Pledgor hereby assigns as collateral security to the Collateral Agent (for the ratable benefit of the Secured Parties), and hereby grants to the Collateral Agent (for the ratable benefit of the Secured Parties), a security interest in and continuing lien on, all of the Pledgor's right, title and interest in, to and under all of

the following, in each case whether now owned or existing or hereafter acquired or arising and wherever located (collectively, the "**Pledged Collateral**"), as security for the prompt and complete payment and performance when due and with all rights and remedies under the UCC and other applicable law (whether at stated maturity, by required prepayment, declaration, acceleration, demand or otherwise) of the Secured Obligations:

Any and all membership interests, limited liability company interests, member's interests, equity interests, and other Capital Stock owned directly by the Pledgor, whether now owned or subsequently acquired, in the Borrower (collectively, the "**Membership Interests**"), including, without limitation, all such interests as are described on Exhibit A hereto, the certificates representing such interests and (i) the Pledgor's share of all rights to receive income, gain, profit, loss or other items allocated or distributed to the Pledgor under the Governing Agreements; (ii) all rights of the Pledgor to receive all income, profit or other dividends, distributions, cash, warrants, rights, options, instruments, securities and other property of any nature whatsoever of the Pledgor with respect to such interests; (iii) all of the Pledgor's capital or membership interest, including any capital accounts, in the Borrower, and all accounts, deposits or credits of any kind with the Borrower; (iv) all of the Pledgor's voting rights or rights to control or direct the affairs of the Borrower; (v) all of the Pledgor's right, title and interest in the Borrower as such rights are derived from the Membership Interests, including any interest of the Pledgor in the entries of the books of the Borrower; (vi) all other right, title and interest in or to the Borrower as such rights are derived from the Membership Interests; (vii) all claims of the Pledgor for damages arising out of a breach of or a default relating to the property described in this Section 2.1; (viii) all rights of the Pledgor to terminate, amend, modify, supplement or waive performance under the Governing Agreements, to perform thereunder and to compel performance and otherwise exercise the remedies thereunder; and (ix) all of the proceeds of any and all of the above. Notwithstanding anything herein to the contrary, in no event shall the security interest granted under Section 2.1(a) attach to any Excluded Collateral, and Pledged Collateral shall not include any Excluded Collateral.

(b) As used herein, the term "proceeds" shall be construed in its broadest sense and shall include whatever is received or receivable when any of the Pledged Collateral, or any proceeds thereof, are sold, collected, exchanged or otherwise disposed of, whether voluntarily or involuntarily, and shall include, without limitation, all rights to payment, including interest and premiums, with respect to any such Pledged Collateral or any proceeds thereof.

(c) Notwithstanding anything to the contrary contained in this Agreement, recourse of the Collateral Agent and the Secured Parties to the Pledgor under this Agreement shall be limited solely to the Pledged Collateral. No assets of the Pledgor other than the Pledged Collateral shall be available to satisfy any liability of the Pledgor arising under this Agreement, whether under this Section 2 or otherwise. The rights of the Collateral Agent and the Secured Parties to satisfy the obligations of the Pledgor pursuant to this Agreement shall be limited solely to the

foreclosure and other remedies in respect of (and all other rights and remedies relating to the foreclosure and other remedies in respect of) the Lien created hereby and the Collateral Agent and the Secured Parties shall have no right to proceed directly against the Pledgor for the satisfaction of any Secured Obligation or for any deficiency remaining after the foreclosure and other remedies in respect of the Lien created hereunder or any portion thereof. The Collateral Agent and the Secured Parties, by accepting this Agreement, agree that they shall not sue for, seek or demand any deficiency judgment against the Pledgor in any action or proceeding under, or by reason of or in connection with this Agreement.

2.2 Delivery of Certificates and Instruments. All certificates or instruments representing or evidencing the Pledged Collateral, if any, shall be delivered to and held by or on behalf of the Collateral Agent in accordance with Section 4.6 and subject to Section 6.22, and shall be in suitable form for transfer by delivery, or shall be accompanied by duly executed, undated instruments of transfer or assignment in blank, all in form and substance reasonably satisfactory to the Collateral Agent. Subject to Section 6.22, the Collateral Agent shall have the right, at any time following the occurrence and during the continuation of an Event of Default, without notice to the Pledgor, to transfer or to register in its name or in the name of any of its nominees any or all of the Pledged Collateral. In addition, the Collateral Agent shall have the right at any time following the occurrence and during the continuation of an Event of Default to exchange certificates or instruments representing or evidencing any of the Membership Interests for certificates or instruments of smaller or larger denominations, and the Pledgor shall cause the Borrower to comply with any such requests of the Collateral Agent.

2.3 Pledgor's Rights.

(a) Voting Rights.

(i) Unless an Event of Default shall have occurred and be continuing, and the Collateral Agent shall have notified the Pledgor in writing that its rights under this Section 2.3 are being suspended, the Pledgor shall be entitled to exercise all voting and other rights with respect to the Pledged Collateral. The Collateral Agent shall execute and deliver to the Pledgor, or cause to be executed and delivered to the Pledgor, all such proxies, powers of attorney, certificates and other instruments as the Pledgor may reasonably request for the purpose of enabling the Pledgor to exercise the voting and/or rights and powers the Pledgor is entitled to exercise pursuant to this clause (i).

(ii) Upon the occurrence and during the continuation of an Event of Default, after the Collateral Agent shall have notified the Pledgor in writing of the suspension of its rights under this Section 2.3, then, subject to Section 6.22, all voting and other rights of the Pledgor with respect to the Pledged Collateral which the Pledgor would otherwise be entitled

to exercise pursuant to the terms of this Agreement or otherwise shall cease, and all such rights shall be vested in the Collateral Agent which shall thereupon have the sole right to exercise such rights. After all Events of Default have been cured or waived and the Pledgor has delivered to the Collateral Agent a certificate to that effect, the Pledgor's rights under this Section 2.3 shall be reinstated.

(b) Distributions.

(i) Unless an Event of Default shall have occurred and be continuing and the Collateral Agent shall have notified the Pledgor in writing that its rights under this Section 2.3 (although no such notice shall be required if an Event of Default under Section 7.01(h) or (i) of the Credit Agreement has occurred and is continuing) are being suspended, the Pledgor shall be entitled to receive and retain any and all dividends, interest, principal and other distributions paid on or distributed in respect of the Pledged Collateral to the extent and only to the extent that all such dividends, interest, principal and other distributions are permitted by, and otherwise paid or distributed in accordance with, the terms and conditions of the Loan Documents.

(ii) Upon the occurrence and during the continuation of an Event of Default, after the Collateral Agent shall have notified the Pledgor in writing of the suspension of its rights under this Section 2.3 (although no such notice shall be required if an Event of Default under Section 7.01(h) or (i) of the Credit Agreement has occurred and is continuing), then, subject to Section 6.22, all rights of the Pledgor to the dividends, interest, principal and other distributions shall cease and all such rights shall be vested in the Collateral Agent which shall thereupon have the sole right to receive all such dividends, interest accrued and other distributions provided that, notwithstanding the occurrence and continuance of an Event of Default, the Pledgor may continue to receive dividends and distributions made pursuant to subclause (b) and subclause (c) of Section 6.05 of the Credit Agreement; provided however that the forgoing shall in no event be construed to amend, modify, supplement or restrict the Collateral Agent's and the other Secured Parties' rights to exercise remedial rights pursuant to the Loan Documents (including rights to issue directions and otherwise act under Control Agreements). After all Events of Defaults have been cured or waived and the Pledgor has delivered to the Collateral Agent a certificate to that effect, the Pledgor's rights under this Section 2.3 shall be reinstated.

(c) Turnover. All distributions and other amounts which are received by the Pledgor contrary to the provisions of this Agreement or the other Loan Documents shall be received in trust for the benefit of the Collateral Agent, shall be segregated from other funds of the Pledgor and shall be paid over to the Collateral Agent as Pledged Collateral in the same form as so received (with any necessary endorsement requested by the Collateral Agent).

2.4 Secured Parties Not Liable. Notwithstanding any other provision contained in this Agreement, the Pledgor shall remain liable under the Governing Agreements to observe and perform all of the conditions and obligations to be observed and performed by the Pledgor thereunder. None of the Collateral Agent, any other Secured Party or any of their respective directors, officers, employees, affiliates or agents shall have any obligations or liability under or with respect to any Pledged Collateral by reason of or arising out of this Agreement (except as set forth in Section 9-207 of the UCC) or the receipt by the Collateral Agent of any payment relating to any Pledged Collateral, nor shall any of the Collateral Agent, any other Secured Party or any of their respective directors, officers, employees, affiliates or agents be obligated in any manner to (a) perform any of the obligations of the Pledgor under or pursuant to the Governing Agreements or any other agreement to which the Pledgor is a party; (b) make any payment or inquire as to the nature or sufficiency of any payment or performance with respect to any Pledged Collateral; (c) present or file any claim or collect the payment of any amounts or take any action to enforce any performance with respect to the Pledged Collateral; or (d) take any other action whatsoever with respect to the Pledged Collateral other than as expressly provided for herein.

2.5 Attorney-in-Fact.

(a) Subject to Section 6.22 and until the Termination Date, the Pledgor hereby appoints the Collateral Agent (such appointment being coupled with an interest), on behalf of the Secured Parties, or any Person, officer or agent whom the Collateral Agent may designate, as its true and lawful attorney-in-fact and proxy, with full irrevocable power and authority in the place and stead of the Pledgor and in the name of the Pledgor or in its own name, at the Pledgor's cost and expense, to the extent reasonable, from time to time to take any action and to execute any instrument which may be reasonably necessary to enforce its rights under this Agreement, including, without limitation, authority to receive, endorse and collect all instruments made payable to the Pledgor representing any distribution, interest payment or other payment in respect of the Pledged Collateral or any part thereof to be paid over to the Collateral Agent pursuant to Section 2.3(b)(ii) and to give full discharge for the same. Notwithstanding anything in this Section 2.5(a) to the contrary, the Collateral Agent shall not exercise any of the rights as attorney-in-fact or proxy provided for in this Section 2.5(a) unless and until an Event of Default has occurred and is continuing.

(b) The Pledgor hereby acknowledges and agrees that the Collateral Agent shall have no fiduciary duties to the Pledgor in acting pursuant to this power-of-attorney and the Pledgor hereby waives any claims or rights of a beneficiary of a fiduciary relationship hereunder.

2.6 Collateral Agent May Perform. If the Pledgor fails to perform any agreement contained herein after receipt of a written request to do so from the Collateral Agent after the occurrence and during the continuance of any Event of Default, the Collateral Agent may (but shall not be obligated to) itself perform, or cause performance of, such agreement, and the expenses of the Collateral Agent, including the reasonable and documented fees and expenses of its counsel, incurred in connection therewith shall be payable by the Borrower under Section 9.05 of the Credit Agreement; provided that if any case or proceeding under any Debtor Relief Law shall have occurred with respect to the Pledgor, the written request described in this Section 2.6 shall not be required and shall be deemed to have been received by the Pledgor upon the failure of the Pledgor to perform such agreement.

2.7 Reasonable Care. The Collateral Agent shall be deemed to have exercised reasonable care in the custody and preservation of the Pledged Collateral in its possession if the Pledged Collateral is accorded treatment reasonably equivalent to that which the Collateral Agent accords its own property of the type of which the Pledged Collateral consists, it being understood that the Collateral Agent shall have no responsibility for (a) ascertaining or taking action with respect to calls, conversions, exchanges, maturities, tenders or other matters relative to any Pledged Collateral, whether or not the Collateral Agent has or is deemed to have knowledge of such matters or (b) taking any necessary steps to preserve rights against any parties with respect to any Pledged Collateral.

2.8 Security Interest Absolute. All rights and security interests of the Collateral Agent purported to be granted hereunder, and all obligations of the Pledgor hereunder, shall be absolute and unconditional irrespective of:

(a) any lack of validity or enforceability of any of the Loan Documents, the Specified Hedging Agreements, the Specified Cash Management Agreements or any other agreement or instrument relating thereto;

(b) any change in the time, manner or place of payment of, or in any other term of, all or any of the Secured Obligations, or any other amendment or waiver of or any consent to any departure from the Loan Documents, the Specified Hedging Agreements, the Specified Cash Management Agreements or any other agreement or instrument relating thereto;

(c) any exchange, release or non-perfection of any other collateral, or any release, amendment or waiver of, or consent to any departure from, any guaranty, for all or any of the Secured Obligations;

(d) any bankruptcy or insolvency of the Borrower, the Pledgor or any other Person; or

(e) any other circumstance which might otherwise constitute a defense available to, or a discharge of, the Pledgor or any third-party pledgor (other than the defense of payment).

SECTION 3. REPRESENTATIONS AND WARRANTIES

The Pledgor represents and warrants to the Collateral Agent for its benefit and the benefit of the Secured Parties, as of the Closing Date, as follows, which representations and warranties shall survive the execution and delivery of this Agreement:

3.1 Organization; Powers and Authority

3.1 Valid Security Interest. This Agreement is effective to create in favor of the Collateral Agent, for the ratable benefit of the Secured Parties, a legal, valid, binding and enforceable security interest (except as enforceability may be subject to applicable Debtor Relief Laws or other similar laws affecting creditors' rights generally and subject to general principles of equity, regardless of whether considered in a proceeding in equity or at law) in the Pledged Collateral and proceeds thereof and, upon the filing of UCC financing statements, naming the Pledgor as "debtor" and the Collateral Agent as "secured party" and describing the Pledged Collateral, in the office of the Secretary of State of New York, the security interest of the Collateral Agent in the Pledged Collateral and the proceeds thereof that can be perfected by the filing of a financing statement under the UCC will constitute a valid, perfected, first priority Lien (subject to, in all cases other than priority, only Permitted Liens). When Pledged Collateral constituting "certificated securities" (as defined in the UCC) is delivered to the Collateral Agent, together with instruments of transfer duly endorsed in blank, this Agreement will create a first priority perfected security interest (subject to, in all cases after their priority, only Permitted Liens) in all right, title and interest of the Pledgor in such certificated securities.

3.2 No Liens. The Pledgor is the owner of all of its right, title and interest in the Pledged Collateral free from any Liens other than the Liens created pursuant to this Agreement, other Permitted Liens and Liens created under the Revolving Facility Documents (subject to the Intercreditor Agreement). No Person other than the Pledgor has any right, title or interest in or to the Pledged Collateral, other than Permitted Liens.

3.3 Certificated Securities. The Membership Interests are "certificated securities" as defined in the UCC.

3 . 4 Location of Records/Chief Executive Office. As of the date hereof, the chief executive office of the Pledgor and the office location where the Pledgor keeps its records concerning the Pledged Collateral is located at:

Montreign Holding Company, LLC
204 Route 17B
Monticello, NY 12701
Facsimile: (845) 807-0000

The Pledgor's taxpayer identification number is 81-4849588 and the Pledgor's organizational identification number with the State of New York is 170103010830.

3.5 Consents, Etc. Subject to Section 6.22, no consent, authorization, approval or other action by, and no notice to or filing with, any governmental authority or any other Person is required either (a) for the pledge by the Pledgor of the Pledged Collateral pursuant to this Agreement or for the due execution, delivery or performance of this Agreement by the Pledgor (other than such consents, authorizations, approvals or other actions obtained on or prior to the date hereof) or (b) subject to Section 6.22, for the exercise by the Collateral Agent of the voting or other rights provided for in this Agreement or of the remedies in respect of the Pledged Collateral pursuant to this Agreement, except (i) in the case of clause (b), as may be required under Gaming Laws and in connection with the disposition of the Pledged Collateral by laws affecting the offering and sale of securities generally and (ii) such consents, approvals, registrations, filings, Permits, notices or other actions (including, without limitation, all Gaming Licenses and other necessary regulatory and gaming approvals and shareholder approvals), as have been made or obtained and are in full force and effect.

3.6 Name. The full legal name of the Pledgor is Montreign Holding Company, LLC, as indicated on the public record of the State of New York. The Pledgor does not, and has not during the previous five years, used any other name or maintained its chief executive office outside of the State referenced in Section 3.5 above.

3.7 Interests in Borrower. The Pledgor owns 100% of the ownership interests of the Borrower.

3.8 Valid Agreement. This Agreement has been duly authorized, executed and delivered by the Pledgor and constitutes a legal, valid and binding obligation of the Pledgor, enforceable against the Pledgor in accordance with its terms except as enforceability may be limited by applicable Gaming Laws and applicable bankruptcy, insolvency, or similar laws affecting the enforcement of creditor's rights generally or by equitable principles relating to enforceability.

3.9 No Conflict. Subject to Section 6.22, neither the execution and delivery hereof nor the consummation of the transactions contemplated hereby nor the compliance with the terms hereof (a) does or will contravene the Pledgor's formation documents or any other legal requirement in any material respect then applicable to or binding on Pledgor or (b) does or will contravene or result in any breach or constitute any default under, or result in or require the creation of any Lien upon any of Pledgor's properties or under any material agreement or instrument to which Pledgor is a party or by which it or any of its material properties may be bound except as contemplated by this Agreement.

SECTION 4. COVENANTS

The Pledgor hereby covenants and agrees from and after the date of this Agreement until the termination of this Agreement in accordance with the provisions of Section 6.9:

4.1 Sale of Pledged Collateral. Except as permitted under the Loan Documents, the Pledgor shall not sell or otherwise dispose of, or grant any option or warrant with respect to, any of the Pledged Collateral.

4.2 No Other Liens. The Pledgor shall not create, incur or permit to exist, shall defend the Pledged Collateral against and shall take such other action as is reasonably necessary to remove, any Lien or claim on or to the Pledged Collateral, other than the Lien created pursuant to this Agreement, other Permitted Liens and Liens created under the Revolving Facility Documents (subject to the Intercreditor Agreement), and subject to such Permitted Liens and Liens created under the Revolving Facility Documents, shall defend the right, title and interest of the Collateral Agent in and to the Pledged Collateral against the claims and demands of all Persons whomsoever.

4.3 Principal Office. The Pledgor shall not establish a new location for its chief executive office, change its state of formation or change its name until (i) it has given to the Collateral Agent and the Administrative Agent not less than ten (10) days prior written notice of its intention so to do, clearly describing such new location or specifying such new name, as the case may be, and (ii) with respect to such new location or such new name, as the case may be, it shall have taken all action necessary to maintain the security interest of the Collateral Agent in the Pledged Collateral intended to be granted hereby at all times fully perfected and in full force and effect.

4.4 Supplements; Further Assurances, etc. The Pledgor shall, at any time and from time to time, at the expense of the Pledgor, promptly execute and deliver all further instruments and documents, and take all further action, that the Collateral Agent or the Administrative Agent may reasonably request, in order to perfect any security interest granted or purported to be granted hereby in the Pledged Collateral or to enable the Collateral Agent to exercise and enforce its rights and remedies hereunder with respect to any Pledged Collateral.

4.5 Amendment of Governing Agreements. Except as permitted under the Loan Documents, the Pledgor shall not, without the prior written consent of the Collateral Agent, permit (a) the cancellation or termination of any Governing Agreement or (b) any amendment, supplement or modification of, or waiver with respect to any of the provisions of, any Governing Agreement that would have a material and adverse effect on either (i) the rights of the Collateral Agent under this Agreement or (ii) the Pledged Collateral.

4.6 Certificates and Instruments. The Pledgor shall cause the Membership Interests to be "certificated securities" (within the meaning of the UCC) at all times during the term of this Agreement. The Pledgor shall deliver all certificates or other documents representing the Pledged Collateral to the Collateral Agent with all necessary instruments of transfer or assignment duly indorsed in blank. In the event the Pledgor obtains possession of any certificates, or any securities or instruments forming a part of the Pledged Collateral, the Pledgor shall promptly deliver the same to the Collateral Agent together with all necessary instruments of transfer or assignment duly indorsed in blank. Prior to any such delivery, any Pledged Collateral in the Pledgor's possession shall be held by the Pledgor in trust for the Collateral Agent. The Pledgor shall execute and deliver to the Collateral Agent an irrevocable proxy in the form attached hereto as Exhibit B and an irrevocable power in the form attached hereto as Exhibit C with respect to the Membership Interests of the Borrower owned by the Pledgor.

4.7 Financing Statements. The Pledgor shall, at the reasonable request of the Collateral Agent, deliver to the Collateral Agent and the Administrative Agent such Financing Statements (or similar statements or instruments of registration under the law of any jurisdiction) as are necessary or, in the reasonable opinion of the Collateral Agent, desirable to establish and maintain the security interests contemplated hereunder as valid, enforceable, first priority security interests as provided herein and the other rights and security contemplated herein, all in accordance with the UCC or any other applicable law, subject to any Permitted Liens and evidence that such Financing Statements have been filed with the New York Secretary of State. The Borrower shall pay any applicable filing fees and related expenses. The Pledgor authorizes the Collateral Agent to file any such Financing Statements (or similar statements or instruments of registration under the law of any jurisdiction) without the signature of the Pledgor; provided, however, the foregoing does not create any obligation on the part of the Collateral Agent to file any Financing Statements.

4.8 Improper Distributions. Notwithstanding any other provision contained in this Agreement, the Pledgor shall not accept any distributions, dividends or other payments (or any collateral in lieu thereof) in respect of the Pledged Collateral, except to the extent the same are permitted by the terms of this Agreement and the other Loan Documents.

4.9 Additional Covenants. The Pledgor agrees to comply, and shall comply, with Section 6.18 of the Credit Agreement as if such Section was fully set forth herein.

SECTION 5. EXERCISE OF REMEDIES UPON AN EVENT OF DEFAULT

5.1 Remedies Generally. If an Event of Default shall have occurred and be continuing, the Collateral Agent may exercise, in addition to all other rights and remedies granted in this Agreement and in any other instrument or agreement securing, evidencing or relating to the Secured Obligations, all rights and remedies of a secured party under the UCC and all other rights and remedies available at law or in equity, in each case subject to and in accordance with the Credit Agreement and the other Loan Documents and solely with respect to the Pledged Collateral.

5.2 Sale of Pledged Collateral. Subject to Section 6.22:

(a) Without limiting the generality of Section 5.1, if an Event of Default shall have occurred and be continuing, the Collateral Agent may, without notice except as specified below, sell the Pledged Collateral or any part thereof in one or more parcels at public or private sale or at any of the Collateral Agent's corporate trust offices or elsewhere, for cash, on credit or for future delivery, irrespective of the impact of any such sales on the market price of the Pledged Collateral at any such sale. Each purchaser at any such sale shall hold the property sold absolutely, free from any claim or right on the part of the Pledgor, and the Pledgor hereby waives (to the extent permitted by law) all rights of redemption, stay and/or appraisal which the Pledgor now has or may at any time in the future have under any rule of law or statute now existing or hereafter enacted. The Pledgor agrees that at least ten (10) days' notice to the Pledgor of the time and place of any public sale or the time after which any private sale is to be made shall constitute reasonable notification. The Collateral Agent shall not be obligated to make any sale of Pledged Collateral regardless of notice of sale having been given. The Collateral Agent may adjourn any public or private sale from time to time by announcement at the time and place fixed therefor, and such sale may, without further notice, be made at the time and place to which it was so adjourned. The Pledgor hereby waives any claims against the Collateral Agent arising by reason of the fact that the price at which any Pledged Collateral may have been sold at such a private sale was less than the price which might have been obtained at a public sale, even if the Collateral Agent accepts the first offer received and does not offer such Pledged Collateral to more than one offeree so long as such process is commercially reasonable.

(b) The Pledgor recognizes that, if an Event of Default shall have occurred and be continuing, the Collateral Agent may elect to sell all or any part of the Pledged Collateral to one or more purchasers in privately negotiated transactions in which the purchasers will be obligated to agree, among other things, to acquire the Pledged Collateral for their own account, for investment and not with a view to the distribution or resale thereof. The Pledgor acknowledges that any such private sales may be at prices and on terms less favorable than those obtainable through a public sale (including, without limitation, a public offering made pursuant to a registration statement under the Securities Act of 1933, as amended), and the Pledgor agrees that the Collateral Agent has no

obligation to engage in public sales and no obligation to delay sale of any Pledged Collateral to permit the issuer thereof to register the Pledged Collateral for a form of public sale requiring registration under the Securities Act of 1933, as amended. If the Collateral Agent determines to exercise its right to sell any or all of the Pledged Collateral, upon written request the Pledgor shall, from time to time, furnish to the Collateral Agent all such information as is necessary in order to determine the number of shares and other instruments included in the Pledged Collateral which may be sold by the Collateral Agent as exempt transactions under the Securities Act of 1933, as amended, and rules of the Securities Exchange Commission thereunder, as the same are from time to time in effect.

5.3 Purchase of Pledged Collateral. The Collateral Agent may be a purchaser of the Pledged Collateral or any part thereof or any right or interest therein at any sale thereof, whether pursuant to foreclosure, power of sale or otherwise hereunder and the Collateral Agent may apply the purchase price to the payment of the Secured Obligations. Any purchaser of all or any part of the Pledged Collateral shall, upon any such purchase, acquire good title to the Pledged Collateral so purchased, free of the security interests created by this Agreement.

5.4 Application of Proceeds. The Collateral Agent shall apply any proceeds from time to time held by it and the net proceeds of any collection, recovery, receipt, appropriation, realization or sale with respect to the Pledged Collateral in accordance with Section 7.02 of the Credit Agreement. For the avoidance of doubt, notwithstanding any other provision of any Loan Document to the contrary, no payment received from the Pledgor, if the Pledgor is not a Qualified ECP Guarantor (as defined in the Pledge and Security Agreement), shall be applied by the Administrative Agent or any other Secured Party to the payment of any Excluded Swap Obligations.

SECTION 6. MISCELLANEOUS PROVISIONS

6.1 Notices. Unless otherwise specifically herein provided, all notices required or permitted under the terms and provisions hereof shall be in writing and any such notice shall become effective if given in accordance with the provisions of Section 9.01 of the Credit Agreement (and, in the case of notices to the Pledgor, addressed to the Pledgor's address as set forth in Section 3.5).

6.2 Continuing Security Interest. This Agreement shall create a continuing security interest in the Pledged Collateral until the Termination Date.

6.3 Reinstatement. This Agreement shall continue to be effective or be reinstated, as the case may be, if at any time any amount received by the Collateral Agent or any other Secured Party hereunder or pursuant hereto is rescinded or must otherwise be restored or returned by the Collateral Agent or such Secured Party upon the occurrence of any proceeding, voluntary or involuntary, involving the bankruptcy, reorganization, insolvency, receivership, liquidation or other similar arrangement affecting the Pledgor, the Borrower or any Subsidiary of the Borrower or upon the appointment of any intervenor or conservator of, or trustee or similar official for, the Pledgor, the Borrower or any Subsidiary of the Borrower or any substantial part of the Pledgor's, the Borrower's or any Subsidiary of the Borrower's assets, or upon the entry of an order by any court avoiding the payment of such amount, or otherwise, all as though such payments had not been made.

6.4 Independent Security. The security provided for in this Agreement shall be in addition to and shall be independent of every other security which the Collateral Agent or the other Secured Parties may at any time hold for any of the Secured Obligations hereby secured, whether or not under the Security Documents. The execution of any other Security Document shall not modify or supersede the security interest or any rights or obligations contained in this Agreement and shall not in any way affect, impair or invalidate the effectiveness and validity of this Agreement or any term or condition hereof. The Pledgor hereby waives its right to plead or claim in any court that the execution of any other Security Document is a cause for extinguishing, invalidating, impairing or modifying the effectiveness and validity of this Agreement or any term or condition contained herein. The Collateral Agent shall be at liberty to accept further security from any third party and/or release such security without notifying the Pledgor and without affecting in any way the obligations of the Pledgor under this Agreement. The Collateral Agent shall determine if any security conferred upon the Secured Parties under the Security Documents shall be enforced by the Collateral Agent, as well as the sequence of securities to be so enforced.

6.5 Amendments. Subject to the last sentence of Section 8.02 of the Credit Agreement, no waiver, amendment, modification or termination of any provision of this Agreement, or consent to any departure by the Pledgor therefrom, shall in any event be effective without the prior written consent of the Pledgor and either (x) the Required Lenders or (y) the Collateral Agent (acting at the direction of the Required Lenders), and none of the Pledged Collateral shall be released without the written consent of the Collateral Agent. Any such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given.

6.6 Successors and Assigns. This Agreement shall be binding upon the Pledgor and its successors, transferees and assigns and shall inure to the benefit of the Collateral Agent and the other Secured Parties and their respective successors, transferees and assigns. The Pledgor shall not assign or otherwise transfer any of its rights or obligations under this Agreement without the written consent of the Collateral Agent (acting with the consent of the Required Lenders pursuant to the Credit Agreement), and any attempted assignment without such consent shall be null and void.

6.7 Collateral Agent. The Collateral Agent has been appointed to act as the collateral agent hereunder by the Secured Parties. The Collateral Agent shall be obligated, and shall have the right hereunder, to make demands, to give notices, to exercise or refrain from exercising any rights or remedies, and to take or refrain from taking any action (including, without limitation, the release or substitution of Pledged Collateral), solely in accordance with this Agreement, the Credit Agreement and the other Loan Documents. In furtherance of the foregoing provisions of this Section 6.7, each Secured Party, by its acceptance of the benefits hereof, agrees that it shall have no right individually to realize upon any of the Pledged Collateral hereunder, it being understood and agreed by such Secured Party that all rights and remedies hereunder may be exercised solely by the Collateral Agent for the benefit of the Secured Parties in accordance with the terms of this Section 6.7 The Collateral Agent may resign or be removed in accordance with Section 8.08 of the Credit Agreement. After the Collateral Agent's resignation or removal thereunder as the Collateral Agent, the provisions of this Agreement shall inure to its benefit as to any actions taken or omitted to be taken by it under this Agreement while it was the Collateral Agent hereunder. The powers conferred on the Collateral Agent hereunder are solely to protect the interests of the Secured Parties in the Collateral and shall not impose any duty upon the Collateral Agent or any other Secured Party to exercise any such powers. The Collateral Agent and the other Secured Parties shall be accountable only for amounts that they actually receive as a result of the exercise of such powers, and neither they nor any of their officers, directors, employees or agents shall be responsible to the Pledgor for any act or failure to act hereunder.

6.8 Survival. All agreements, statements, representations and warranties made by the Pledgor herein or in any certificate or other instrument delivered by the Pledgor or on its behalf under this Agreement shall be considered to have been relied upon by the Collateral Agent and the other Secured Parties and shall survive the execution and delivery of this Agreement until the Termination Date regardless of any investigation made by the Collateral Agent or the other Secured Parties or made on their behalf.

6.9 Transfer of Loans. Without limiting the generality of Section 6.2, but subject to the terms of the Credit Agreement and any other Loan Document, any Lender may assign or otherwise transfer any Loans held by it to any other Person, and such other Person shall thereupon become vested with all the benefits in respect thereof granted to the Lenders herein or otherwise. Upon the Termination Date, the security interest granted hereby shall terminate hereunder and of record and all rights to the Pledged Collateral shall revert to the Pledgor. Upon any such termination, the Collateral Agent shall, at the Pledgor's expense, execute and deliver to the Pledgor (without recourse and without any representation or warranty) such documents as the Pledgor shall reasonably request to evidence such termination and shall use commercially reasonable efforts to return to the Pledgor (without recourse and without any representation or warranty) any Pledged Collateral previously delivered to the Collateral Agent (or to the extent necessary, execute a lost affidavit in form and substance reasonably satisfactory to the Pledgor).

6.10 No Waiver; Remedies Cumulative. No failure or delay on the part of the Collateral Agent in exercising any right, power or privilege hereunder and no course of dealing between any of the parties hereto shall operate as a waiver thereof; nor shall any single or partial exercise of any right, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, power or privilege hereunder or thereunder. The rights and remedies herein expressly provided are cumulative and not exclusive of any rights or remedies which the Collateral Agent would otherwise have.

6.11 Counterparts. This Agreement may be executed in counterparts (and by different parties hereto on different counterparts), each of which shall be deemed an original but all of which when taken together shall constitute a single contract. Delivery of an executed signature page to this Agreement by facsimile transmission, "pdf" or similar electronic copy shall be as effective as delivery of a manually signed counterpart of this Agreement. Any party hereto may request an original counterpart of any party delivering such electronic counterpart. A set of the copies of this Agreement signed by all the parties shall be lodged with the Borrower and the Administrative Agent.

6.12 Headings Descriptive. The headings of the several sections and subsections of this Agreement are inserted for convenience only and shall not in any way affect the meaning or construction of any provision of this Agreement.

6.13 Severability. In case any provision contained in or obligation under this Agreement shall be invalid, illegal or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations, or of such provision or obligation in any other jurisdiction, shall not in any way be affected or impaired thereby.

6.14 Governing Law. **THIS AGREEMENT SHALL BE CONSTRUED IN ACCORDANCE WITH, AND GOVERNED BY, THE LAWS OF THE STATE OF NEW YORK (WITHOUT REGARD TO CONFLICT OF LAWS PROVISIONS THAT WOULD RESULT IN THE APPLICATION OF LAWS OTHER THAN THE LAWS OF THE STATE OF NEW YORK (OTHER THAN ANY MANDATORY PROVISIONS OF THE UCC RELATING TO THE LAW GOVERNING PERFECTION AND THE EFFECT OF PERFECTION OF THE SECURITY INTERESTS GRANTED THEREUNDER)).**

6.15 Consent to Jurisdiction.

(a) The Pledgor hereby irrevocably and unconditionally submits, for itself and its property, to the exclusive jurisdiction of any New York State court or Federal court of the United States of America sitting in New York City, Borough of Manhattan, and any appellate court from any thereof, in any action or proceeding arising out of or relating to this Agreement, or for recognition or enforcement of any judgment, and the Pledgor hereby irrevocably and unconditionally agrees that all claims in respect of any such action or proceeding shall be heard and determined in such New York State court or, to the extent permitted by law, in such Federal court. The Pledgor agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Nothing in this Agreement, however, shall affect any right that any Secured Party may otherwise have to bring any action or proceeding relating to this Agreement against the Pledgor or its properties in the courts of any jurisdiction.

(b) The Pledgor hereby irrevocably and unconditionally waives, to the fullest extent it may legally and effectively do so, any objection which it may now or hereafter have to the laying of venue of any action or proceeding arising out of or relating to this Agreement, or for recognition or enforcement of any judgment, in any New York State court or Federal court of the United States of America sitting in New York City. The Pledgor hereby irrevocably and unconditionally waives, to the fullest extent permitted by law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court.

(c) The Pledgor irrevocably consents to service of process in the manner provided for notices in Section 6.1. Nothing in this Agreement will affect the right of any party to this Agreement to serve process in any other manner permitted by law.

(d) The Pledgor shall maintain an agent to receive service of process in New York, New York at all times until the Termination Date.

6.16 Waiver of Jury Trial. EACH PARTY HERETO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT. EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT, THE SECURED PARTIES AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 6.16.

6.17 Entire Agreement. This Agreement, together with any other agreement executed in connection herewith (including the Credit Agreement and the other Loan Documents), is intended by the parties as a final expression of their agreement as to the matters covered hereby and is intended as a complete and exclusive statement of the terms and conditions thereof. Accordingly, this Agreement may not be contradicted by evidence of prior, contemporaneous or subsequent oral agreements of the parties. There are no unwritten or oral agreements between the parties.

6.18 Independent Obligations. The Pledgor's obligations under this Agreement are independent of those of the Borrower. Subject to Section 2.1(c), the Collateral Agent may bring a separate action against the Pledgor without first proceeding against the Borrower or any other Person or any other security held by the Collateral Agent and without pursuing any other remedy.

6.19 Waiver of Defenses.

(a) Subject to Section 2.1(c), to the maximum extent permitted by applicable law, the Pledgor hereby waives: (i) any defense of a statute of limitations; (ii) any defense based on the legal disability of any Person or any discharge or limitation of the liability of any Person to the Collateral Agent or the Secured Parties, whether consensual or arising by operation of law; (iii) presentment, demand, protest and notice of any kind (other than as expressly provided by the Loan Documents); and (iv) any defense based upon or arising out of any defense which any Person may have to the payment or performance of any part of the Secured Obligations (other than the defense of payment).

(b) Subject to Section 2.1(c), the Pledgor hereby waives, to the maximum extent permitted by applicable law, (i) all rights under any law to require the Collateral Agent to pursue the Borrower or any other Person (including the Pledgor under any other obligation of the Pledgor), any security which the Collateral Agent may hold, or any other remedy before proceeding against the Pledgor; (ii) all rights of reimbursement or subrogation, all rights to enforce any remedy that the Collateral Agent or the Secured Parties may have against any Person, and all rights to participate

in any security held by the Collateral Agent, in each case until the Termination Date; (iii) all rights to require the Collateral Agent to give any notices of any kind, including, without limitation, notices of acceptance, nonpayment, nonperformance, protest, dishonor, default, delinquency or acceleration, or to make any presentments, demands or protests, except as set forth herein or expressly provided in the Credit Agreement or any of the Loan Documents; (iv) all rights to assert the bankruptcy or insolvency of any Person as a defense hereunder or as the basis for rescission hereof; (v) all rights under any law purporting to reduce the Pledgor's obligations hereunder if the Secured Obligations are reduced other than as a result of payment in Cash of such Secured Obligations including, without limitation, any reduction based upon any Secured Party's error or omission in the administration of the Secured Obligations; (vi) all defenses based on the incapacity, disability or lack of authority of the Borrower or any other Person, the repudiation of the Loan Documents, the Specified Hedging Agreements or the Specified Cash Management Agreements by the Borrower or any Person, the failure by the Collateral Agent or the Secured Parties to enforce any claim against any Person, or the unenforceability in whole or in part of any Loan Documents, the Specified Hedging Agreements or the Specified Cash Management Agreements; (vii) all suretyship and guarantor's defenses generally including, without limitation, defenses based upon collateral impairment or any statute or rule of law providing that the obligation of a surety or guarantor must not exceed or be more burdensome than that of the principal; (viii) all rights to insist upon, plead or in any manner whatever claim or take the benefit or advantage of, any appraisal, valuation, stay, extension, marshaling of assets, redemption or similar law, or exemption, whether now or at any time hereafter in force, which may delay, prevent or otherwise affect the performance by the Pledgor of its obligations under, or the enforcement by the Collateral Agent of, this Agreement; (ix) any requirement on the part of the Collateral Agent or the holder of any obligations under the Loan Documents, the Specified Hedging Agreements or the Specified Cash Management Agreements to mitigate the damages resulting from any default; and (x) except as otherwise specifically set forth herein or as required by applicable law, all rights of notice and hearing of any kind prior to the exercise of rights by the Collateral Agent upon the occurrence and during the continuation of an Event of Default to repossess with judicial process or to replevy, attach or levy upon the Pledged Collateral. To the extent permitted by law, the Pledgor waives the posting of any bond otherwise required of the Collateral Agent in connection with any judicial process or proceeding to obtain possession of, replevy, attach, or levy upon the Pledged Collateral, to enforce any judgment or other security for the Secured Obligations, to enforce any judgment or other court order entered in favor of the Collateral Agent, or to enforce by specific performance, temporary restraining order, preliminary or permanent injunction, this Agreement or any other agreement or document between the Pledgor, the Collateral Agent and the Secured Parties. The Pledgor further agrees that upon the occurrence and during the continuation of an Event of Default, the Collateral Agent may elect to nonjudicially or judicially foreclose against any real or personal property security it holds for the Secured Obligations or any part thereof, or to exercise any other remedy against any Person, any security or any guarantor, even if the effect of that action is to deprive the Pledgor of

the right to collect reimbursement from any Person for any sums paid by the Pledgor to the Collateral Agent or any Secured Party.

(c) If the Collateral Agent may, under applicable law, proceed to realize its benefits under any of the Loan Documents giving the Collateral Agent a Lien upon any Collateral, whether owned by the Borrower or by any other Person, either by judicial foreclosure or by non-judicial sale or enforcement, the Collateral Agent may, at its sole option, determine which of its remedies or rights it may pursue without affecting any of the rights and remedies of the Collateral Agent under this Agreement. If, in the exercise of any of such rights and remedies, the Collateral Agent shall forfeit any of its rights or remedies, including any right to enter a deficiency judgment against the Borrower or any other Person, whether because of any applicable laws pertaining to "election of remedies" or the like, to the extent permitted by applicable law, the Pledgor hereby consents to such action by the Collateral Agent and waives any claim based upon such action, even if such action by the Collateral Agent shall result in a full or partial loss of any rights of subrogation, indemnification or reimbursement which the Pledgor might otherwise have had but for such action by the Collateral Agent or the terms herein. Any election of remedies which results in the denial or impairment of the right of the Collateral Agent to seek a deficiency judgment against any of the parties to any of the Loan Documents shall not, to the extent permitted by applicable law, impair the Pledgor's obligation hereunder. In the event the Collateral Agent shall bid at any foreclosure or trustee's sale or at any private sale permitted by law or the Loan Documents, the Collateral Agent may bid all or less than the amount of the Secured Obligations.

(d) To the extent permitted by applicable law, the Pledgor shall not assert and hereby waives any claim against any Indemnitee, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement, the Credit Agreement or any agreement or instrument contemplated hereby or thereby, the Transactions, any Loan or Letter of Credit or the use of the proceeds thereof.

6.20 Subrogation, Etc. Notwithstanding any payment or payments made by the Pledgor or the exercise by the Collateral Agent of any of the remedies provided under this Agreement or any other Loan Document, until the Secured Obligations have been paid in full, the Pledgor shall have no claim (as defined in 11 U.S.C. § 101(5)) of subrogation to any of the rights of the Collateral Agent against any Person, the Pledged Collateral or any guaranty held by the Collateral Agent for the satisfaction of any of the Secured Obligations, nor shall the Pledgor have any claims (as defined in 11 U.S.C. § 101(5)) for reimbursement, indemnity, exoneration or contribution from any such Person in respect of payments made by the Pledgor hereunder. Notwithstanding the foregoing, if any amount shall be paid to the Pledgor on account of such subrogation, reimbursement, indemnity, exoneration or contribution rights at any time before the Secured Obligations have been paid in full, such amount shall be held by the Pledgor in trust for the Collateral Agent segregated from other funds of the Pledgor, and shall be turned over to the Collateral Agent in the exact form received by the Pledgor (duly endorsed by the Pledgor to the Collateral Agent if required) to be applied against the Secured Obligations in such amounts and in such order as the Collateral Agent may elect, or as directed by the Administrative Agent.

6.21 Collateral Agent. The rights, powers, benefits, privileges, immunities and indemnities given to the Collateral Agent and set forth in the Credit Agreement are expressly incorporated herein by reference thereto and, subject to Section 6.22, shall survive the termination of this Agreement and the resignation or removal of the Collateral Agent.

6.22 Regulatory Matters. Notwithstanding anything to the contrary set forth in this Agreement or any other Loan Document, the Collateral Agent, on behalf of the Secured Parties, acknowledges and agrees that its rights, remedies and powers under this Agreement (including its exercise of remedial rights upon collateral and voting of equity interests in (or otherwise taking control of) Persons licensed by the Gaming Authorities and/or under Gaming Laws), may be exercised only to the extent that (i) the exercise thereof does not violate any applicable laws, rules and regulations of the Gaming Authorities, including Gaming Laws, and (ii) all necessary approvals, licenses and consents from the Gaming Authorities required in connection therewith are obtained. Notwithstanding any other provision of this Agreement, the Pledgor expressly authorizes the Collateral Agent and the other Secured Parties to cooperate with the applicable Gaming Authorities in connection with the administration of their regulatory jurisdiction over the Pledgor and the Borrower, including, without limitation, to the extent not inconsistent with the internal policies of such Collateral Agent or Secured Party and any applicable legal or regulatory restrictions, the provision of such documents or other information as may be requested by any such Gaming Authorities relating to the Collateral Agent, the Pledgor or the Borrower, or the Loan Documents. The parties acknowledge that the provisions of this Section 6.22 shall not be for the benefit of the Pledgor, the Borrower or any other Person.

6.23 Intercreditor Agreement. All rights and remedies of the Collateral Agent hereunder are, as between the Administrative Agents (as defined in the Intercreditor Agreement) and the Collateral Agents (as defined in the Intercreditor Agreement), subject to the terms of the Intercreditor Agreement. This provision is for the benefit of, and may be enforced exclusively by, the Administrative Agents and the Collateral Agents only. For the avoidance of doubt, this, provision is not for the benefit of the Pledgor and may not, under any circumstances, be enforced by the Pledgor.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and delivered by their officers thereunto duly authorized as of the date first above written.

MONTREIGN HOLDING COMPANY, LLC,
a New York limited liability company

By: /s/ Joseph A. D'Amato
Name: Joseph A. D'Amato
Title: President

CREDIT SUISSE AG,
CAYMAN ISLANDS BRANCH,
as Collateral Agent

By: /s/ Robert Hetu
Name: Robert Hetu
Title: Authorized Signatory

By: /s/ Whitney Gaston
Name: Whitney Gaston
Title: Authorized Signatory

ACKNOWLEDGED AND AGREED:

MONTREIGN OPERATING COMPANY, LLC,
a New York limited liability company

By: /s/ Joseph A. D'Amato

Name: Joseph A. D'Amato

Title: President

EXHIBIT 10.49

COMPLETION GUARANTY

This COMPLETION GUARANTY (this "**Agreement**"), dated as of January 24, 2017, is made by EMPIRE RESORTS, INC., a Delaware corporation ("**Guarantor**"), in favor of CREDIT SUISSE AG, CAYMAN ISLANDS BRANCH, as the administrative agent under the Credit Agreement (as defined below) (in such capacity, and together with its successors and assigns acting in such capacity, the "**Administrative Agent**"), CREDIT SUISSE AG, CAYMAN ISLANDS BRANCH, as the disbursement agent under the Building Loan Disbursement Agreement (as defined below) and the Project Disbursement Agreement (as defined below) (in such capacities, and together with its successors and assigns acting in such capacities, the "**Disbursement Agent**") and CREDIT SUISSE AG, CAYMAN ISLANDS BRANCH, as the Collateral Agent (as defined in the Credit Agreement) (in such capacity, and together with its successors and assigns acting in such capacity, the "**Collateral Agent**").

This Agreement is made and delivered pursuant to (a) the Building Term Loan Agreement (as amended, supplemented, restated or otherwise modified from time to time, the "**Credit Agreement**"), dated as of even date herewith, among Montreign Operating Company, LLC, a New York limited liability company (the " **Borrower**"), the Administrative Agent and the lenders from time to time party thereto (the "**Lenders**"), (b) the Building Loan Disbursement Agreement (as amended, supplemented, restated or otherwise modified from time to time, the "**Building Loan Disbursement Agreement**"), dated as of even date herewith, among the Borrower, the Disbursement Agent, the Administrative Agent and the Collateral Agent, and (c) the Project Disbursement Agreement (as amended, supplemented, restated or otherwise modified from time to time, the "**Project Disbursement Agreement**" and, together with the Building Loan Disbursement Agreement, the "**Disbursement Agreements**")), dated as of even date herewith, among the Borrower, the Disbursement Agent, the Administrative Agent and the Collateral Agent. The Administrative Agent, the Disbursement Agent, the Collateral Agent, the Lenders and the other Secured Parties are hereinafter referred to as the "**Beneficiaries**".

RECITALS

A . The Project. The Borrower and the other Loan Parties have certain interests on certain land in Sullivan County, New York, on which land they intend to develop, build, own and operate a hotel, entertainment and gambling establishment (including all buildings, structures and improvements related thereto, all fixtures, attachments, appliances, equipment, machinery and other articles attached thereto or used in connection therewith and all alterations thereto or replacements thereof, collectively, the "**Project**").

B . Credit Agreement. Concurrently herewith, the Lenders have agreed to extend certain credit facilities to the Borrower pursuant to the Credit Agreement, the proceeds of which will be used to finance, among other things, certain "costs of improvements" (as defined in the Lien Law of the State of New York) associated with the construction and development of the Project.

C . Building Loan Disbursement Agreement. Concurrently herewith, the Borrower, the Disbursement Agent, the Administrative Agent and the Collateral Agent have entered into the Building Loan Disbursement Agreement in order to set forth, among other things, the mechanics for and conditions to disbursements of the proceeds of the loans advanced under the Credit Agreement for the payment of Building Loan Costs (as such term is defined in the Credit Agreement).

D . Project Disbursement Agreement. Concurrently herewith, the Borrower, the Disbursement Agent, the Administrative Agent and the Collateral Agent have entered into the Project Disbursement Agreement in order to set forth, among other things, the mechanics for and conditions to disbursements of certain equity proceeds for the payment of Project Costs (as such term is defined in the Project Disbursement Agreement).

E . Requirement of Agreement. The Beneficiaries have agreed to enter into and consummate the transactions contemplated under the Loan Documents (as such term is defined in the Credit Agreement) on the condition that Guarantor executes and delivers to the Administrative Agent and the Disbursement Agent this Agreement.

F. Benefit to Guarantor. Guarantor acknowledges that it will benefit, directly and indirectly, if the Beneficiaries enter into the Loan Documents.

G. Concurrent Obligations. The obligations of Guarantor hereunder are being incurred concurrently with entering into by the Borrower of the Loan Documents to which it is a party.

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and as an inducement to the Beneficiaries to enter into the Loan Documents, Guarantor hereby consents and agrees as follows:

SECTION 1.
DEFINITIONS

Capitalized terms used but not defined herein shall have the respective meanings given them in the Credit Agreement (or if not defined therein, then in the Building Loan Disbursement Agreement), and the rules of interpretation contained in Section 1.2 of the Building Loan Disbursement Agreement shall apply hereto; *provided* upon termination of the Credit Agreement or the Building Loan Disbursement Agreement, any such terms shall continue to have the meanings given in the Credit Agreement or the Building Loan Disbursement Agreement, as applicable, as in effect immediately prior to such termination.

SECTION 2.
AGREEMENTS OF THE PARTIES

2.1 Subject to the terms hereof, the undersigned Guarantor, as primary obligor and not merely as surety, unconditionally and irrevocably guarantees to the Administrative Agent acting on

behalf of the Lenders the performance by the Borrower of its obligations (the "**Guaranteed Obligations**") under:

(a) the Building Loan Disbursement Agreement and the Project Disbursement Agreement to achieve Completion and thereafter to achieve Final Completion;

(b) Section 6.4 of the Building Loan Disbursement Agreement to deposit (or cause to be deposited) funds into the Building Loan Company Funds Account at the times and in the amounts set forth therein (but subject to the next sentence) in the event that the Project shall at any time not be In Balance (as defined in the Building Loan Disbursement Agreement but disregarding clause (b) of such definition (*i.e.,* solely for the purposes of this Guaranty, the definition of "In Balance" shall be deemed modified such that balancing of the Interest Reserve Account shall not be required for the purposes of this Guaranty));

(c) Section 6.4 of the Project Disbursement Agreement to deposit (or cause to be deposited) funds into the Project Company Funds Account (as defined in the Project Disbursement Agreement) at the times and in the amounts set forth therein (but subject to the next sentence) in the event that the Project shall at any time not be In Balance (as defined in the Project Disbursement Agreement);

(d) the payment of all expenses incurred by the Beneficiaries in enforcing any of Guarantor's obligations and liabilities hereunder, including, without limitation, reasonable and documented fees and expenses of legal counsel;

and agrees that if for any reason the Borrower shall fail to pay or perform when due any of such Guaranteed Obligations, the Guarantor will pay or perform the same following demand by the Administrative Agent (and within ten (10) days of such demand in the case of the foregoing clauses (b) – (d)).

In furtherance of, and without limiting the foregoing, in the event that the Project shall at any time not be In Balance (as defined in either Disbursement Agreement but as such definition is deemed modified solely for the purposes of this Guaranty as set forth in Section 2.1(b) above), Guarantor shall, or shall cause, subject to Section 2.6 of this Agreement, deposit (or cause to be deposited) funds into the Building Loan Company Funds Account or the Project Company Funds Account (as defined in the Project Disbursement Agreement), as applicable, in an amount sufficient to cause the Project to be In Balance (as defined in the applicable Disbursement Agreement but as such definition is deemed modified solely for the purposes of this Guaranty as set forth in Section 2.1(b) above); *provided*, that for purposes of the foregoing "In Balance" determinations, any amounts on deposit in (i) the Building Loan Company Funds Account, Building Loan Disbursement Account, Building Loan Cash Management Account or Building Loan Proceeds Account (but specifically excluding any amounts on deposit in the Building Loan Interest Reserve Account) or (ii) the Project Company Funds Account, Project Disbursement Account or Project Cash Management Account (in each case as defined in the Project Disbursement Agreement), in any case that have previously been withdrawn therefrom pursuant to or as a result of the exercise of rights or remedies by the Beneficiaries against any such accounts or amounts on deposit therein (other than to the extent of any such amounts that

have thereafter been applied to Project Costs or Building Loan Costs (other than Debt Financing Costs)) shall be deemed to remain on deposit in such accounts.

Without in any way limiting the above obligations of Guarantor, in the event the Administrative Agent demands performance of this Agreement under Section 2.1(a), the Disbursement Agent shall disburse funds in the "Accounts" (as defined in each Disbursement Agreement) (other than funds in the Building Loan Interest Reserve Account) for the purpose of paying (or reimbursing Borrower or Guarantor for) Building Loan Costs (other than Debt Financing Costs) and Project Costs, in accordance with and subject to the provisions of the Disbursement Agreements, but in all events notwithstanding any Event of Default, and any failure to be satisfied of any other condition to any such disbursement set forth in the Disbursement Agreements, that are not curable, or reasonably capable of being satisfied, by Guarantor; provided, however, that the obligation of the Disbursement Agent to make such undisbursed Loan funds available to Guarantor is expressly conditioned upon: (x) there being no continuing default by Guarantor under this Agreement; and (y) the Project being In Balance (as defined in each of the Disbursement Agreements but as such definition is deemed modified solely for the purposes of this Guaranty as set forth in Section 2.1(b) above) or Borrower (and/or Guarantor) having deposited funds into the Building Loan Company Funds Account or the Project Company Funds Account, as applicable, in an amount sufficient to cause the Project to be In Balance (as defined in each of the Disbursement Agreements but as such definition is deemed modified solely for the purposes of this Guaranty as set forth in Section 2.1(b) above).

Notwithstanding any other provision hereof, Guarantor's aggregate liability under this Agreement, but excluding any amounts payable under Section 17 below, shall in no event exceed $30,000,000 (the "**Liability Cap**") and any amounts deposited by Guarantor (or caused to be deposited by Guarantor) into either the Building Loan Company Funds Account or the Project Company Funds Account after the date hereof in accordance herewith shall reduce the then applicable Liability Cap dollar-for-dollar (it being understood, *however*, that the Liability Cap shall not be reduced by any such deposit arising out of or otherwise relating to (i) the funding of a Scope Change pursuant to Section 6.1.1 of the Building Loan Disbursement Agreement or (ii) the provisions of Section 6.1.5 of the Building Loan Disbursement Agreement). Amounts payable by Guarantor under Section 17 below shall be disregarded for purposes of the Liability Cap. Except for any demand required hereby, Guarantor waives notice of acceptance of this Agreement and of any obligation to which it applies or may apply under the terms hereof, and waives diligence, presentment, demand of payment, notice of dishonor or non-payment, protest, notice of protest of any such obligations, suit or taking other action by the Beneficiaries against, and giving any notice of default or other notice to, or making any demand on, any party liable thereon (including the Borrower and Guarantor).

Furthermore, notwithstanding anything to the contrary contained in this Agreement, it is expressly acknowledged and agreed that the Guaranteed Obligations shall specifically exclude any increases in the payment or performance obligations and liabilities of Guarantor under this Agreement to the extent directly resulting from (x) any Scope Change or (y) any modification or termination of any contract subject a Consent, in the case of each of clauses (x) and (y) made by or at the direction of any Agent, any Lender, or any Person acting by, through or under any Agent or any Lender on or after any Lender Control Date (as hereinafter defined), unless Guarantor shall have approved such increased obligations and liabilities in writing. As used herein, the term "**Lender Control Date**" shall mean the earliest to occur of the following: (i) the date upon which a foreclosure sale under the Mortgage has been consummated or the date upon which any Agent, any Lender, or any assignee, designee or nominee of any Agent or any Lender (including, without limitation, any receiver appointed at the request of any Agent or any Lender) otherwise acquires possession or control of the Project and (ii) the date upon which a foreclosure sale under the Equity Pledge Agreement has been consummated or the date that any Agent or any Lender (or any assignee or designee thereof) otherwise acquires ownership and/or control of the Pledged Collateral (as defined in the Equity Pledge Agreement).

2.2 This Agreement (subject to the limitations set forth in Section 2.1 above) is a primary obligation of Guarantor and is an absolute, unconditional, continuing and irrevocable agreement of payment and performance and is in no way conditioned on or contingent upon any attempt to enforce in whole or in part the Borrower's or any other Person's liabilities and obligations to the Beneficiaries.

2.3 The Beneficiaries may, in accordance with the Loan Documents, at any time and from time to time (whether or not after revocation or termination of this Agreement) without the consent of or notice to Guarantor (except such consent or notice as may be expressly required by the Loan Documents or applicable law which cannot be waived), without incurring responsibility to Guarantor and without impairing or releasing the obligations of Guarantor hereunder, upon or without any terms or conditions and in whole or in part, (a) change the manner, place and terms of payment or change or extend the time of payment of, renew, or alter any Obligation, or any obligations and liabilities (including any of those hereunder) incurred directly or indirectly in respect thereof or hereof or in any manner modify, amend or supplement the terms of any Loan Document (in each case, with the consent of the Borrower and/or another Loan Party, if expressly required by such documents) and this Agreement shall apply to the Guaranteed Obligations as changed, extended, renewed, modified, amended, supplemented or altered in any manner; (b) exercise or refrain from exercising any rights against the Borrower or others (including Guarantor) or otherwise act or refrain from acting; (c) add or release any other guarantor or contributor from its obligations; (d) settle or compromise any Guaranteed Obligations and/or any obligations and liabilities (including any of those hereunder) incurred directly or indirectly in respect thereof or hereof, and may subordinate the payment of all or any part thereof to the payment of any obligations and liabilities which may be due to the Beneficiaries or others; (e) sell, exchange, release, surrender, realize upon or otherwise deal with in any manner or in any order any property by whomsoever pledged or mortgaged to secure or howsoever securing the Guaranteed Obligations or any liabilities or obligations (including any of those hereunder) incurred directly or indirectly in respect thereof or hereof and/or any offset there against; (f) accept any additional security for the Obligations or any increase, substitution or change therein; (g) apply any sums by whomsoever paid or howsoever

realized to any obligations and liabilities of the Borrower or the other Loan Parties to the Beneficiaries under the Loan Documents in the manner provided therein regardless of what obligations and liabilities remain unpaid; (h) consent to or waive any breach of, or any act of omission or default under, any provision of any Loan Document (including the obligation to achieve Completion or the obligation to achieve Final Completion) or otherwise amend, modify or supplement (with the consent of the Borrower and/or another Loan Party, if expressly required by such documents) any Loan Document (including the obligation to achieve Completion or the obligation to achieve Final Completion); (i) grant credit to any Loan Party, regardless of the financial or other condition of such Loan Party at the time of any such grant; and/or (j) act or fail to act in any manner referred to in this Agreement which may deprive Guarantor of any right to subrogation which Guarantor may, notwithstanding the provisions of Section 6 hereof, have against any Loan Party to recover full indemnity for any payments made pursuant to this Agreement or of any right of contribution which Guarantor may have against any other party. Notwithstanding the foregoing or anything else to the contrary contained herein, this Agreement cannot be changed, extended, renewed, modified, amended, altered, waived or otherwise supplemented in any manner except in accordance with Section 13 hereof.

2.4 No invalidity, irregularity or unenforceability of any of the Guaranteed Obligations shall affect, impair, or be a defense to this Agreement, which is a primary obligation of Guarantor.

2.5 This is a continuing Agreement and all obligations to which it applies or may apply under the terms hereof shall be conclusively presumed to have been created in reliance hereon. In the event that, notwithstanding the provisions of Section 2.2 hereof, this Agreement shall be deemed revocable in accordance with applicable law, then any such revocation shall become effective only upon receipt by the Administrative Agent of written notice of revocation signed by Guarantor. No revocation or termination hereof shall affect in any manner rights arising under this Agreement with respect to the Guaranteed Obligations (a) arising prior to receipt by the Administrative Agent of written notice of such revocation or termination and the sole effect of revocation and termination hereof shall be to exclude from this Agreement obligations thereafter arising which are unconnected with Guaranteed Obligations theretofore arising or transactions theretofore entered into or (b) arising as a result of an "Event of Default" under any Loan Document occurring by reason of the revocation or termination of this Agreement.

2.6 If the Obligations are (a) accelerated in accordance with the terms of the Credit Agreement or (b) otherwise become due and payable as a result of the occurrence of the events described under clause (h) or (i) of Section 7.01 of the Credit Agreement (the date of either such occurrence, the "**Specified Date**") and, in any such case, at such time the Borrower has not fully paid or performed all Guaranteed Obligations, then the Administrative Agent may at its option (in its sole and absolute discretion), elect to require Guarantor to pay Beneficiaries, as a fixed payment on account of damages for the Borrower's default, an amount (the "**Contract Damages**"), such amount in no event to exceed the Liability Cap, equal to all remaining Project Costs and Building Loan Costs (but excluding Debt Financing Costs) that would be incurred to achieve Final Completion for the Project (whether such Project Costs and/or Building Loan Costs would have been paid by the Borrower or from proceeds of Loans or any other financial accommodation, whether or not the Project is actually completed and whether or not Beneficiaries intend to complete the Project) (all

such remaining Project Costs and Building Loan Costs (but excluding Debt Financing Costs), the "**Remaining Costs**") *less* all amounts on deposit in (i) the Accounts (as defined in the Building Loan Disbursement Agreement) (but specifically excluding any amounts on deposit in the Building Loan Interest Reserve Account) or (ii) the Accounts (as defined in the Project Disbursement Agreement), in each case, as of the Specified Date, but, in each case, without giving effect to any amounts withdrawn therefrom pursuant to or as a result of the exercise of rights or remedies by any Beneficiary against any such accounts or amounts on deposit therein (whether on or prior to the Specified Date) other than to the extent of any such amounts that have been applied to Project Costs or Building Loan Costs (but excluding Debt Financing Costs) prior to the date of determination of Remaining Costs. For purposes of determining Contract Damages, written estimates of such Project Costs and Building Loan Costs to achieve Final Completion of the Project from the Construction Consultant (as defined in the applicable Disbursement Agreement) shall bind Beneficiaries and Guarantor provided such estimates are made in good faith and on a commercially reasonable basis. If the Administrative Agent requires Guarantor to pay Contract Damages, then Guarantor shall do so within ten days after such Administrative Agent's written demand. If Guarantor pays Contract Damages, then Guarantor's liability under this Agreement shall thereupon terminate.

SECTION 3.
REPRESENTATIONS AND WARRANTIES

Guarantor makes the representations and warranties set forth below to the Beneficiaries as of the date hereof:

3.1 Guarantor is duly organized and validly existing under the laws of the jurisdiction of its organization, has all requisite power and authority to execute, deliver and perform under this Agreement and, in each case except to the extent the failure to have such power and authority could not reasonably be expected to materially and adversely affect the financial condition of Guarantor or the ability of Guarantor to perform its obligations under this Agreement, to (i) own or hold under lease and operate the properties it purports to own or hold under lease and (ii) carry on its business as now being conducted.

3.2 This Agreement has been duly authorized, executed and delivered by Guarantor and constitutes the legal, valid and binding obligation of Guarantor, enforceable against Guarantor in accordance with the terms of this Agreement, subject to applicable bankruptcy, insolvency, moratorium and other similar laws affecting creditors' rights generally and general principles of equity.

3.3 Neither the execution and delivery hereof nor the consummation of the transactions contemplated hereby nor the compliance with the terms hereof (a) does or will contravene its formation documents or any other legal requirement then applicable to or binding on Guarantor, (b) does or will contravene or result in any breach or constitute any default under, or result in or require the creation of any Lien upon any of Guarantor's properties under, any agreement or instrument to which Guarantor is a party or by which it or any of its properties may be bound, or (c) does or will require the consent or approval of any Person which has not previously been obtained.

3.4 All governmental authorizations and actions necessary in connection with the execution and delivery by Guarantor of this Agreement and the performance of its obligations hereunder have been obtained or performed and remain valid and in full force and effect.

3.5 There is no pending or, to the best of Guarantor's knowledge, threatened action or proceeding affecting Guarantor before any court, governmental agency or arbitrator, which might reasonably be expected to materially and adversely affect the ability of Guarantor to perform its obligations under this Agreement.

3.6 Guarantor has established adequate means of obtaining financial and other information pertaining to the businesses, operations and condition (financial and otherwise) of the Borrower, the other Loan Parties and their respective properties on a continuing basis, and Guarantor now is and hereafter will be completely familiar with the businesses, operations and condition (financial and otherwise) of the Borrower, the other Loan Parties and their respective properties.

3.7 Guarantor is, and will not as a result of the execution and delivery of this Agreement cease to be, Solvent.

SECTION 4.
COVENANTS

So long as any Guaranteed Obligations are outstanding, Guarantor agrees that:

4.1 Guarantor will preserve, renew and keep in full force and effect its existence as a Delaware corporation;

4.2 Guarantor will comply in all material respects with all applicable laws and orders to which it may be subject if failure to so comply would materially impair its ability to perform its obligations under this Agreement; and

4.3 Promptly, and in any event within seven Business Days after obtaining knowledge thereof, Guarantor will give to the Administrative Agent notice of the occurrence of any event or of any litigation or governmental proceeding pending (a) against Guarantor which could reasonably be expected to affect the business, operations, property, assets or condition (financial or otherwise) of Guarantor so as to materially and adversely affect the ability of Guarantor to perform its obligations hereunder or (b) which relates to this Agreement.

SECTION 5.
WAIVER

To the fullest extent permitted by law, Guarantor hereby waives and relinquishes all rights and remedies accorded by applicable law to sureties or guarantors and agrees not to assert or take advantage of any such rights or remedies, including without limitation (a) any right to require any Beneficiary to proceed against the Borrower or any other Person or to proceed against or exhaust any security held by any Beneficiary at any time or to pursue any other remedy in any Beneficiary's power before proceeding against Guarantor, (b) any defense that may arise by reason of the

incapacity, lack of power or authority, death, dissolution, merger, termination or disability of the Borrower or any other Person or the failure of any Beneficiary to file or enforce a claim against the estate (in administration, bankruptcy or any other proceeding) of the Borrower or any other Person, (c) except for any demand required hereby, any right to demand, presentment, protest and notice of any kind, including without limitation notice of the existence, creation or incurring of any new or additional indebtedness or obligation or of any action or non-action on the part of the Borrower, any Beneficiary, any endorser or creditor of the Borrower or Guarantor or on the part of any other Person under this or any other instrument in connection with any obligation or evidence of indebtedness held by any Beneficiary as collateral or in connection with any Guaranteed Obligations, (d) any defense based upon an election of remedies by any Beneficiary, including without limitation an election to proceed by non-judicial rather than judicial foreclosure, which destroys or otherwise impairs any subrogation rights which Guarantor may, notwithstanding the provisions of Section 6 hereof, have against the Borrower or any other Person, any right which Guarantor may, notwithstanding the provisions of Section 6 hereof, have to proceed against the Borrower or any other Person for reimbursement, or both, (e) any defense based on any offset against any amounts which may be owed by any Person to Guarantor for any reason whatsoever, (f) any defense based on any act, failure to act, delay or omission whatsoever on the part of the Borrower or any other Person or the failure by the Borrower or any other Person to do any act or thing or to observe or perform any covenant, condition or agreement to be observed or performed by it under the Loan Documents, (g) any defense based upon any statute or rule of law which provides that the obligation of a surety must be neither larger in amount nor in other respects more burdensome than that of the principal, provided, that upon payment in full of the Guaranteed Obligations or the Contract Damages, as applicable, this Agreement shall no longer be of any force or effect, (h) any defense, setoff or counterclaim which may at any time be available to or asserted by the Borrower or any other Person against any Beneficiary or any other Person under any of the Loan Documents, including in connection with the exercise of any judgment by the Disbursement Agent, the Construction Consultant (as defined in each Disbursement Agreement) or any other Person under either Disbursement Agreement or any other Loan Document or by reason of the delay or failure by the Disbursement Agent or the Construction Consultant (as defined in each Disbursement Agreement) or any other Person to perform its duties thereunder, (i) any duty on the part of any Beneficiary to disclose to Guarantor any facts any Beneficiary may now or hereafter know about the Borrower or any other Person, regardless of whether any Beneficiary has reason to believe that any such facts materially increase the risk beyond that which Guarantor intends to assume, or has reason to believe that such facts are unknown to Guarantor, or has a reasonable opportunity to communicate such facts to Guarantor, since Guarantor acknowledges that Guarantor is fully responsible for being and keeping informed of the financial condition of the Borrower and its Affiliates and of all circumstances bearing on the risk of non-payment of any obligations and liabilities hereby guaranteed, (j) the fact that Guarantor at any time in the future may not be an Affiliate of the Borrower, (k) any defense based on any change in the time, manner or place of any payment under, or in any other term of, the Loan Documents (including the obligation to achieve Completion or the obligation to achieve Final Completion) or any other amendment, renewal, extension, acceleration, compromise or waiver of or any consent or departure from the terms of the Loan Documents (including the obligation to achieve Completion or the obligation to achieve Final Completion), (l) any defense arising because of any Beneficiary's election of the application of Section 1111(b)(2) of Title 11 of the United States Code entitled "Bankruptcy", or any successor

statute (the "Bankruptcy Code"), in any proceeding instituted under the Bankruptcy Code, and (m) any defense based upon any borrowing or grant of a security interest under Section 364 of the Bankruptcy Code.

SECTION 6.
SUBROGATION

Until all Obligations have been "paid in full", (a) Guarantor shall not have any right of subrogation and waives (i) all rights to enforce any remedy which any Beneficiary now has or may hereafter have against the Borrower or any other Person, (ii) the benefit of, and all rights to participate in, any security now or hereafter held by any Beneficiary from the Borrower or any other Person and (iii) any right to require the Administrative Agent, Disbursement Agent and/or Collateral Agent to join Guarantor in any action brought hereunder or to commence any action against or obtain any judgment against the Loan Parties or to pursue any other remedy or enforce any other right, and (b) Guarantor waives any claim, right or remedy which Guarantor may now have or hereafter acquire against the Borrower or any other Person that arises hereunder and/or from the performance by Guarantor hereunder including, without limitation, any claim, remedy or right of subrogation, reimbursement, exoneration, contribution, indemnification, or participation in any claim, right or remedy of any Beneficiary against the Borrower or any other Person, or any security which any Beneficiary may now have or hereafter acquire, whether or not such claim, right or remedy arises in equity, under contract, by statute, under common law or otherwise; provided that thereafter Guarantor shall be entitled to seek reimbursement from the Borrower or any other Person for any amounts paid by Guarantor pursuant to this Agreement.

SECTION 7.
BANKRUPTCY

7.1 The obligations of Guarantor under this Agreement shall not be altered, limited or affected by any proceeding, voluntary or involuntary, involving the bankruptcy, reorganization, insolvency, receivership, liquidation or arrangement of the Borrower or any other Person, or by any defense which the Borrower or any other Person may have by reason of any order, decree or decision of any court or administrative body resulting from any such proceeding.

7.2 So long as any Guaranteed Obligations or, in the event the Beneficiaries elect to receive Contract Damages in accordance with Section 2.6 hereof, any Contract Damages, are owed to any Beneficiary, to the extent of such Guaranteed Obligations or Contract Damages, if Guarantor files, in any bankruptcy or other proceeding of or against the Borrower or any Subsidiary thereof, any claim relating to any indebtedness of the Borrower or any Subsidiary thereof, Guarantor hereby assigns to the Beneficiaries, all rights of Guarantor thereunder and, to the extent Guarantor receives a distribution or other payment on account of any such claims, shall pay (or otherwise transfer) such distribution or payment to the Beneficiaries to the extent of any Guaranteed Obligations or Contract Damages which remain unpaid (and in all such cases, whether in administration, bankruptcy or otherwise, the person authorized to pay such a claim shall pay the same to the Beneficiaries to the extent of any Guaranteed Obligations or Contract Damages which then remain unpaid); *provided*, *however*, that Guarantor's obligations hereunder shall not be satisfied except to the extent that the Beneficiaries receive cash by reason of any such payment or distribution. If the Beneficiaries receive

anything hereunder other than cash, the same shall be held as collateral for amounts due under this Agreement (and, to the extent so held at such time, shall be promptly transferred to Guarantor upon the Completion Guaranty Termination Date). Further, so long as any Guaranteed Obligations or Contract Damages are owed to any Beneficiary, Guarantor shall not have the right to accept or reject any plan proposed in any such bankruptcy or other proceeding or take any other action which a party filing a claim is entitled to take, in each case without the prior written consent of the Administrative Agent, and if so directed by the Administrative Agent will vote on any such plan in such capacity as directed by the Administrative Agent.

SECTION 8.
SUCCESSIONS OR ASSIGNMENTS

8.1 This Agreement shall inure to the benefit of the permitted successors or assigns of the Beneficiaries who shall have, to the extent of their interest and in accordance with the Loan Documents, the rights of the Beneficiaries hereunder.

8.2 This Agreement is binding upon Guarantor and its successors and assigns. Guarantor is not entitled to assign its obligations hereunder to any other Person, and any purported assignment in violation of this provision shall be void; *provided* that Guarantor may assign its obligations hereunder to the successor to its assets and obligations by merger or operation of law, in connection with a merger or other corporate reorganization as long as any such successor assumes in writing Guarantor's obligations hereunder pursuant to documentation in form and substance reasonably acceptable to the Administrative Agent and otherwise provides to the Administrative Agent such other deliverables (including authorizing resolutions, constituent documents and legal opinions) as reasonably requested by, and in form and substance reasonably acceptable to, the Administrative Agent.

SECTION 9.
TERMINATION

Notwithstanding anything contained in this Agreement to the contrary, this Agreement shall automatically terminate upon the earliest of (such earliest date, the "**Completion Guaranty Termination Date**") (a) payment by Guarantor pursuant to this Agreement of aggregate amounts equal to the Liability Cap plus any other amounts due under Section 17 below, (b) "payment in full" of all the Obligations, (c) the occurrence of Final Completion of the Project and (d) the satisfaction in full by Guarantor of its obligations under this Agreement (*i.e.*, payment in full of the Guaranteed Obligations or the Contract Damages).

SECTION 10.
ADDITIONAL WAIVERS

10.1 No delay on the part of any Beneficiary in exercising any of their respective rights (including those hereunder) and no partial or single exercise thereof and no action or non-action by any Beneficiary, with or without notice to the other party or anyone else, shall constitute a waiver of any rights or shall affect or impair this Agreement.

10.2 EACH PARTY HERETO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT. EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 10.2.

SECTION 11.
INTERPRETATION

The section headings in this Agreement are for the convenience of reference only and shall not affect the meaning or construction of any provision hereof.

SECTION 12.
NOTICES

All notices in connection with this Agreement shall be given in writing hand-delivered or sent by facsimile transmission or by certified mail return-receipt requested, postage prepaid. All such notices shall be sent to the appropriate facsimile number or address, as the case may be, set forth in Section 16 below or to such other number or address as shall have been subsequently specified by written notice to the other party, and shall be sent with copies, if any, as indicated below. All such notices shall be effective upon receipt, and confirmation by answerback of any such notice so sent by facsimile shall be sufficient evidence of receipt thereof.

SECTION 13.
AMENDMENTS

Subject to the last sentence of Section 8.02 and Section 9.08(e) of the Credit Agreement, this Agreement may be amended, changed, extended, renewed, modified, altered, waived or supplemented only with the written consent of Guarantor and (i) the Required Lenders or (ii) the Administrative Agent (at the direction of the Required Lenders).

SECTION 14.
JURISDICTION; GOVERNING LAW

14.1 Guarantor hereby irrevocably and unconditionally submits, for itself and its property, to the exclusive jurisdiction of any New York State court or Federal court of the United States of America sitting in New York City, Borough of Manhattan, and any appellate court from any thereof, in any action or proceeding arising out of or relating to this Agreement, or for recognition or enforcement of any judgment, and Guarantor hereby irrevocably and unconditionally agrees that all claims in respect of any such action or proceeding may be heard and determined in such New York State court or, to the extent permitted by law, in such Federal court. The parties hereto agree that

a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Nothing in this Agreement shall affect any right that any Beneficiary may otherwise have to bring any action or proceeding relating to this Agreement against Guarantor or its properties in the courts of any jurisdiction.

14.2 Guarantor hereby irrevocably and unconditionally waives, to the fullest extent it may legally and effectively do so, any objection which it may now or hereafter have to the laying of venue of any suit, action or proceeding arising out of or relating to this Agreement, or for recognition or enforcement of any judgment in any New York State or Federal court of the United States of America sitting in New York City, Borough of Manhattan. Each of the parties hereto hereby irrevocably and unconditionally waives, to the fullest extent permitted by law, the defense of an inconvenient forum to the maintenance of such suit, action or proceeding in any such court.

14.3 Guarantor hereby irrevocably and unconditionally consents to service of process served by mailing a copy thereof by certified or registered mail, or any substantially similar form of mail, addressed to Guarantor as provided for notices hereunder. Nothing in this Agreement will affect the right of any Beneficiary to serve process in any other manner permitted by law.

14.4 THIS AGREEMENT AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER SHALL BE CONSTRUED IN ACCORDANCE WITH, AND GOVERNED BY, THE LAWS OF THE STATE OF NEW YORK (WITHOUT REGARD TO CONFLICT OF LAWS PROVISIONS THAT WOULD RESULT IN THE APPLICATION OF LAWS OTHER THAN THE LAWS OF THE STATE OF NEW YORK).

SECTION 15.
INTEGRATION OF TERMS

This Agreement contains the entire agreement between Guarantor and the Beneficiaries relating to the subject matter hereof and supersedes all oral statements and prior writing with respect hereto.

SECTION 16.
ADDRESSES

The address of Guarantor for notices is:

Empire Resorts, Inc.
204 Route 17B
Monticello, NY 12701
Attention: Chief Executive officer
Facsimile: (845) 807-0000
Telephone: (845) 807-0001

With copies to (for informational purposes only and not constituting notice):

Paul, Weiss, Rifkind, Wharton & Garrison LLP
1285 Avenue of the Americas
New York, New York 10019-6064
Attention: Harris B. Freidus
Facsimile: (212) 492-0064
Telephone: (212) 373-3064

The address of the Administrative Agent, the Disbursement Agent and the Collateral Agent for notices is:

If to the Administrative Agent:

Credit Suisse AG, Cayman Islands Branch
Eleven Madison Avenue
New York, NY 10010
Attn: Sean Portrait – Agency Manager
Facsimile: (212) 322-2291

If to the Disbursement Agent:

Credit Suisse AG, Cayman Islands Branch
Eleven Madison Avenue
New York, New York 10010
Attention: Sean Portrait – Agency Manager,
Shawan Fox
Facsimile: (212) 322-2291
Email: agency.loanops@credit-suisse.com,
shawan.fox@credit-suisse.com

If to the Collateral Agent:

Credit Suisse AG, Cayman Islands Branch
Eleven Madison Avenue
New York, NY 10010
Attn: Sean Portrait – Agency Manager
Facsimile: (212) 322-2291

With a copy to:

Latham & Watkins LLP
12670 High Bluff Drive

San Diego, CA 92130
Attention: Brett P. Rosenblatt
Facsimile: (858) 523-5450
Telephone: (858) 523-5401

SECTION 17.
INTEREST; COLLECTION EXPENSES

Any amount required to be paid by Guarantor pursuant to the terms hereof shall bear interest at the default rate applicable to ABR Loans under Section 2.09 of the Credit Agreement or the maximum rate permitted by law, whichever is less, from the date due hereunder until paid in full. Guarantor shall pay to the Beneficiaries upon demand all costs and expenses incurred by the Beneficiaries in enforcing this Agreement.

SECTION 18.
COUNTERPARTS

This Agreement may be executed in one or more duplicate counterparts, and when executed and delivered by all of the parties listed below shall constitute a single binding agreement.

SECTION 19.
NO BENEFIT TO THE BORROWER

This Agreement is for the benefit of only the Beneficiaries and Guarantor and is not for the benefit of the Borrower, any other Loan Party or any other Person. This Agreement shall not be deemed to be a contract to make a loan, or extend other debt financing or financial accommodation, for the benefit of the Borrower or any other Loan Party, in each case within the meaning of Section 365(e) of the Bankruptcy Code or otherwise. Notwithstanding and in addition to the foregoing, Guarantor hereby irrevocably waives, to the extent it may do so under applicable law, any protection to which it may be entitled under Sections 365(c)(1), 365(c)(2) and 365(e)(2) of the Bankruptcy Code or equivalent provisions of the laws or regulations of any other jurisdiction with respect to any proceedings, or any successor provision of law of similar import, in the event of any bankruptcy, insolvency or similar proceeding with respect to the Borrower or its Affiliates. Specifically, in the event that the trustee (or similar official) in a bankruptcy, insolvency or similar proceeding with respect to the Borrower or any of its Affiliates or a debtor-in-possession takes any action (including the institution of any action, suit or other proceeding for the purpose of enforcing this Agreement), Guarantor shall not assert any defense, claim or counterclaim denying liability hereunder on the basis that this Agreement is an executory contract or a "financial accommodation" that cannot be assumed, assigned or enforced or on any other theory directly or indirectly based on Section 365(c)(1), 365(c)(2) or 365(e)(2) of the Bankruptcy Code, or equivalent provisions of the laws or regulations of any other jurisdiction with respect to any proceedings or any successor provision of law of similar import. If a bankruptcy, insolvency or similar proceeding with respect to the Borrower or any of its Affiliates shall occur, Guarantor agrees, after the occurrence of such bankruptcy, insolvency or similar proceeding, to reconfirm in writing to the extent permitted by applicable law, its pre-petition waiver of any protection to which it may be entitled under

Sections 365(c)(1), 365(c)(2) and 365(e)(2) of the Bankruptcy Code or equivalent provisions of the laws or regulations of any other jurisdiction with respect to proceedings.

SECTION 20.
DISBURSEMENT AGENT

The Beneficiaries may appoint or designate the Disbursement Agent to exercise or enforce their rights and remedies under this Agreement and to otherwise act on their behalf in all matters related hereto. Guarantor shall respect and treat any and all actions so taken by the Disbursement Agent as if taken by the Beneficiaries. All references in this Agreement to the Disbursement Agent shall mean and be construed as the Disbursement Agent acting pursuant to the applicable Disbursement Agreement.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, Guarantor has caused this Agreement to be duly executed and delivered as of the day and year first written above.

GUARANTOR:

EMPIRE RESORTS, INC.,
a Delaware corporation

By: /s/ Joseph A. D'Amato
Name: Joseph A. D'Amato
Title: President and Chief Executive Officer

Agreed and accepted:

CREDIT SUISSE AG, CAYMAN ISLANDS BRANCH,
as the Administrative Agent

By: /s/ Robert Hetu
Name: Robert Hetu
Title: Authorized Signatory

By: /s/ Whitney Gaston
Name: Whitney Gaston
Title: Authorized Signatory

CREDIT SUISSE AG, CAYMAN ISLANDS BRANCH,
as the Disbursement Agent

By: /s/ Robert Hetu
Name: Robert Hetu
Title: Authorized Signatory

By: /s/ Whitney Gaston
Name: Whitney Gaston
Title: Authorized Signatory

CREDIT SUISSE AG, CAYMAN ISLANDS BRANCH,
as the Collateral Agent

By: /s/ Robert Hetu
Name: Robert Hetu
Title: Authorized Signatory

By: /s/ Whitney Gaston
Name: Whitney Gaston
Title: Authorized Signatory

EXHIBIT 10.50

Execution Version

PROJECT DISBURSEMENT AGREEMENT

among

CREDIT SUISSE AG, CAYMAN ISLANDS BRANCH,
as the Disbursement Agent

and

CREDIT SUISSE AG, CAYMAN ISLANDS BRANCH,
as the Administrative Agent

and

CREDIT SUISSE AG, CAYMAN ISLANDS BRANCH,
as the Collateral Agent

and

MONTREIGN OPERATING COMPANY, LLC
as the Borrower

and

EMPIRE RESORTS REAL ESTATE II, LLC
as the EV Subsidiary

Dated as of January 24, 2017

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TABLE OF EXHIBITS

PROJECT DISBURSEMENT AGREEMENT

This **PROJECT DISBURSEMENT AGREEMENT** (as amended, supplemented, restated or otherwise modified from time to time, this "**Agreement**") is dated as of January 24, 2017 by and among **CREDIT SUISSE AG, CAYMAN ISLANDS BRANCH**, solely in its capacity as disbursement agent hereunder (together with its successors and assigns from time to time in such capacity, the "**Disbursement Agent**"), **CREDIT SUISSE AG, CAYMAN ISLANDS BRANCH** solely in its capacity as administrative agent under the Loan Agreement (as defined below) (together with its successors and assigns from time to time in such capacity, the "**Administrative Agent**"), **CREDIT SUISSE AG, CAYMAN ISLANDS BRANCH** solely in its capacity as collateral agent under the Loan Agreement (together with its successors and assigns from time to time in such capacity, the "**Collateral Agent**"), **MONTREIGN OPERATING COMPANY, LLC**, a New York limited liability company (the "**Borrower**"), and **EMPIRE RESORTS REAL ESTATE II, LLC**, a New York limited liability company (the "**EV Subsidiary**," and collectively with the Borrower, jointly and severally, the "**Company**").

RECITALS

A. **Project**. The Company is developing a project commonly known as the "Montreign Resort Casino," comprised of a casino (including a banquet and event center), hotel, entertainment village, parking structure and various food and beverage facilities, including restaurants and related facilities and amenities, to be located in the Town of Thompson, Sullivan County, New York (the "**Project**").

B. **Building Loan Facility**. Concurrently herewith, the lenders under that certain Building Term Loan Agreement (as amended, supplemented, restated or otherwise modified from time to time, the "**Loan Agreement**"), dated as of the date hereof, by and among the Borrower, the Administrative Agent and the financial institutions from time to time party thereto in the capacity of lenders, are providing commitments to extend certain credit facilities to the Borrower, as set forth in the Loan Agreement.

C. **Building Loan Disbursement Agreement**. Concurrently herewith, the Borrower, the EV Subsidiary, the Disbursement Agent, the Collateral Agent and the Administrative Agent have entered into that certain Building Loan Disbursement Agreement, dated as of the date hereof (as amended, supplemented, restated or otherwise modified from time to time, the "**Building Loan Disbursement Agreement**") in order to set forth (i) the conditions upon which, and the manner in which, funds under the Loan Agreement will be deposited into and disbursed from certain accounts to pay Building Loan Costs (as defined therein), including certain debt financing costs and other expenses as provided therein, and (ii) certain representations, warranties and covenants of the Borrower.

D. **Purpose**. The parties have entered into this Agreement in order to set forth (i) the conditions upon which, and the manner in which, funds will be deposited into and disbursed from the Accounts (as defined below) to pay Project Costs (as defined below) and certain other costs and expenses of the Company, and (ii) certain representations, warranties and covenants of the Borrower.

E. Subsidiary Guarantees. The obligations of the Borrower hereunder are guaranteed by the Subsidiary Guarantors.

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Definitions and Rules of Interpretation.

1.1 Definitions. The terms identified below in this Section 1 shall have the meanings herein specified, and capitalized terms used but not otherwise identified in this Section 1 shall have the meanings given in the Building Loan Disbursement Agreement (or in the Loan Agreement, to the extent the Building Loan Disbursement Agreement so designates) unless otherwise stated herein .

"**Account Bank**" means (a) with respect to the Holding Accounts, the Holding Account Bank, and (b) with respect to the Disbursement Accounts, the Local Bank.

"**Accounts**" means, collectively, the Holding Account and the Disbursement Accounts.

"**Additional Contract Certificate**" has the meaning given in Section 6.3.2(a).

"**Administrative Agent**" has the meaning given in the preamble.

"**AEV Minimum Amount**" means Thirty-Five Million Dollars ($35,000,000).

"**AEV Minimum Contribution**" has the meaning given in Section 2.2.1(c).

"**Agreement**" has the meaning given in the preamble.

"**Allocated BLDA EV Equity**" has the meaning given in Section 6.11.

"**Anticipated EV Equity**" means, on any date, an amount equal to (a) the AEV Minimum Amount minus (b) the amount of Cash equity contributed into the Project Company Funds Account prior to such date pursuant to Section 2.2.1(c) and Section 6.11; *provided, however,* that if, on any Benchmark Date described on Exhibit G, the amount of Cash equity contributed into the Project Company Funds Account prior to such Benchmark Date is less than the amount opposite such Benchmark Date on Exhibit G (the amount of such shortfall, a "**EV Equity Shortfall**"), then Anticipated EV Equity shall at all times thereafter (unless cured as set forth in the following proviso) be deemed to be zero ($0) (a "**Deemed AEV Zero Event**"); *provided further, however,* that the Borrower shall be permitted to cure a Deemed AEV Zero Event by contributing Cash to the Project Company Funds Account (which contribution shall not be deemed a funding under or an offset against a Liability Cap under (and as defined in) any Completion Guaranty) in an amount equal to

such EV Equity Shortfall no later than five (5) Business Days after the applicable Benchmark Date described on Exhibit G.

"**Anticipated FF&E Financing Proceeds**" means (a) at any time prior to the time that all FF&E Agreements sufficient to purchase all equipment (and services associated therewith) required under the "**FF&E**" Line Item and/or to reimburse all Reimbursable FF&E Amounts are entered into, the lesser of (i) the amount of funds reasonably expected to be expended by Borrower after the date of determination to purchase all equipment set forth in the "**FF&E**" Line Item in the Project Budget and for the services (if any) associated therewith that remain unpaid at such time through Final Completion and/or to reimburse all Reimbursable FF&E Amounts, and (ii) the amount of proceeds of any Indebtedness that Borrower reasonably anticipates incurring under Section 6.01(j) of the Loan Agreement from the date of determination through the Scheduled Completion Date or has already borrowed but not yet utilized, the proceeds of which will be applied to FF&E Costs (or FF&E Reimbursements); and (b) from and after the time that all FF&E Agreements sufficient to purchase all equipment (and services associated therewith) required under the "**FF&E**" Line Item and/or to reimburse all Reimbursable FF&E Amounts are entered into, the amount available to be borrowed (or previously borrowed to the extent not utilized to pay FF&E Costs or FF&E Reimbursements) by Borrower thereunder.

"**Anticipated Investment Income**" means, at any time, with respect to the Project Company Funds Account, the amount of investment income which the Borrower reasonably estimates will accrue on the funds in such Account through the Scheduled Completion Date, taking into account the current and future anticipated rates of return on investments in such Account permitted under the Loan Documents, the anticipated times and amounts of deposits to such Account and draws from such Account for the payment of Project Costs and the nature and tenor of the investments in which such funds are permitted to be invested.

"**Available Gaming Commission Bond Amount**" means, on any date of determination the aggregate amount of Cash Collateral Postings then securing the Gaming Commission Bond (to the extent the bonding company or surety, or trustee on behalf thereof, on such date of determination, has not exercised against such cash collateral).

"**Available Project Funds**" means, on any date of determination, the sum of (a) the amounts then on deposit in the Project Company Funds Account (excluding any amounts designated by Borrower as Construction Balancing Cash) and the Disbursement Accounts, collectively; plus (b) the Anticipated Investment Income at such time; plus (c) the PDA Bond Amount Share at such time; plus (d) the PDA Share at such time.

"**Benchmark Date**" means each date designated on Exhibit G as a
"Benchmark Date" on which Cash equity is to be deposited into the Project Company Funds Account in respect of the AEV Minimum Amount.

"**BLDA Bond Amount Share**" has the meaning given in the Building Loan Disbursement Agreement.

"**Borrower**" has the meaning given in the preamble.

"**Building Loan Disbursement Agreement**" has the meaning given in the recitals.

"**Cash Collateral Posting**" means the delivery of cash or cash equivalents by the Borrower to financial institutions, bonding companies or other sureties to support or secure the issuance by such entities of letters of credit, bonds or other instruments securing performance of the Gaming Commission Bond.

"**Cash Management Allowance**" means, with regard to the Project Cash Management Account at any time, Three Million Dollars ($3,000,000) in the aggregate plus an amount that, in the good faith determination of the Borrower, will be required to be applied for payroll purposes constituting Project Costs prior to the next succeeding Disbursement.

"**Collateral Agent**" has the meaning given in the preamble.

"**Company**" has the meaning given in the preamble.

"**Completion Items**" means minor or insubstantial details, the non-completion of which, when all such items are taken together, will not interfere in any material respect with the intended purpose of the Contract (or Line Item, as the case may be) to which they pertain.

"**Consent**" has the meaning given in Section 6.3.2(c).

"**Construction Balancing Cash**" has the meaning given in Section 6.13.

"**Construction Balancing Cash Transfer**" has the meaning given in Section 6.13.

"**Contingency Transfer**" has the meaning given in Section 6.1.4.

"**Contract Amendment**" means any amendment or modification of, or a waiver of a right or obligation under, a Contract to which a Loan Party is a party, or under any payment or performance security provided thereunder.

"**Contract Amendment Certificate**" has the meaning given in Section 6.2(b).

"**Contracts**" means contracts for the performance of the matters described in the Project Budget to which a Loan Party is a party, the payment and performance security issued thereunder (if any), each other agreement entered into by a Loan Party on or prior to the Closing Date relating to Project Costs (other than the Loan Documents) and each additional Contract entered into by a Loan Party in accordance with the Loan Documents which pertain to Line Items in the Project Budget; *provided, however,* that, for the avoidance of doubt, a "Contract" hereunder shall not be deemed to include or be duplicative of any "Project Document" as defined in the Building Loan Disbursement Agreement.

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

"**Disbursement**" means a transfer of funds from the Project Company Funds Account to a Disbursement Account or, to the extent provided hereunder and in accordance with Section 4.2, directly to pay Project Costs (or Building Loan Costs under the Building Loan Disbursement Agreement pursuant to, and subject to the limitations and requirements of, Section 6.1.4 or Section 6.11 hereof, or pursuant to the application of Project Budget Realized Savings, as defined in the Building Loan Disbursement Agreement).

"**Disbursement Account**" means each of the Project Disbursement Account, the Project Cash Management Account and any other accounts or sub-accounts established from time to time with respect thereto pursuant to the terms of the applicable Control Agreements.

"**Disbursement Agent**" has the meaning given in the preamble.

"**Disbursement Request**" has the meaning given in Section 4.1.1(a).

"**Disputed Amounts**" means payments or invoices or matters which are being disputed in good faith by the Borrower under the applicable Contracts; *provided, however,* that (a) such disputes are not reasonably likely to result in the sale, forfeiture or loss of the Project, any material portion thereof or any material Collateral, title thereto or any interest therein and shall not interfere in any material respect with the construction or operation of the Project; and (b) the aggregate amount of Disputed Amounts identified by all payees, together with (but without duplication) the aggregate amount payable with respect to Disputed Amounts under all Contracts, plus all other Remaining Costs with respect to all Line Items in the Project Budget (other than with regard to the "**FF&E**" Line Item) plus the Required Contingency, do not exceed the Available Project Funds; and (c) sufficient funds remain available under (i) the applicable Line Item, (ii) the "**Project Contingency**" Line Item in excess of the Required Contingency, and/or (iii) the "**Flex Contingency**" Line Item to pay such disputed amount in full should the Borrower be obligated to make such payment under the terms of the applicable Contract. For the avoidance of doubt, Disputed Amounts shall not be duplicative of the Final Completion Amount or Retained Amounts.

"**Event of Default**" has the meaning given in Section 7.

"**EV Subsidiary**" has the meaning given in the preamble.

"**First Line Item**" has the meaning given in Section 6.1.1(e).

"**FF&E**" means all furniture, fixtures and equipment that are included in the "**FF&E**" Line Item and the "**Other FF&E**" Line Item of the Project Budget.

"**FF&E Costs**" means all costs related to the acquisition and installation of the furniture, fixtures and equipment that are needed to achieve Final Completion and that are included in the "**FF&E"** Line Item (for purposes of clarification, FF&E Costs excludes any amounts set forth in the "**Other FF&E**" Line Item).

"**FF&E Reimbursement**" means the proceeds of FF&E Agreements that have been deposited by Borrower into the Project Company Funds Account and designated by Borrower to be applied toward Project Costs hereunder and in reimbursement of Reimbursable FF&E Amounts.

"**Final Completion Amount**" means, from time to time from and after the Completion Date, the estimated cost to complete the Completion Items and/or other remaining matters under the Contracts (or otherwise with regard to a Line Item in the Project Budget), as certified by the Borrower and reasonably confirmed by the Construction Consultant with respect to each Disbursement from and after the Completion Date in their respective certificates substantially in the form of Exhibit A hereto and Exhibit 1 to Exhibit A hereto, respectively. For the avoidance of doubt, the Final Completion Amount shall not be duplicative of Disputed Amounts or Retained Amounts.

"**Gaming Commission Bond**" means that certain bond in the aggregate amount equal to $65,142,588 required to be delivered by the Borrower to the Commission pursuant to General Condition 2 of the Gaming License Conditions.

"**Holding Account**" means the Project Company Funds Account and any other accounts or sub-accounts established from time to time with respect thereto pursuant to the terms of the applicable Control Agreement.

"**Holding Account Bank**" means, as of the Closing Date, M&T Bank and/or Wilmington Trust, National Association (or any replacement bank substituted therefor pursuant to the provisions of Section 12.17 of the Building Loan Disbursement Agreement (as incorporated herein pursuant to Section 1.3 hereof)).

"**In Balance**" means, at any time of determination thereof and both before and after giving effect to any requested Disbursement, that (a) the Available Project Funds *plus* the Reimbursable FF&E Amounts (but excluding any Reimbursable FF&E Amounts that have not been reimbursed as of the earlier of the Completion Date or the Scheduled Completion Date) are no less than the sum of the total Remaining Costs (excluding FF&E Costs) plus the Required Contingency; (b) the Anticipated FF&E Financing Proceeds *minus* the Reimbursable FF&E Amounts are sufficient to pay all remaining FF&E Costs; and (c) the Project is "In Balance" as defined in and under the Building Loan Disbursement Agreement.

"**Key Contract**" means each Contract (excluding contracts for the purchase of gaming equipment or gaming systems) with an individual contract amount in excess of $4,000,000, each of which is set forth on Exhibit F (as such Exhibit may be updated pursuant to the terms of this Agreement).

"**Lenders**" has the meaning given in the recitals.

"**Line Item**" means each of the following individual line items set forth in the Project Budget (as in effect from time to time), and any additional line item that may be added pursuant to Section 6.1(a):

(a) FF&E;

(b) Other FF&E

(c) Pre-Opening Costs, Operating Costs and Other Transaction Expenses;

(d) Project Contingency; and

(e) Flex Contingency

"**Line Item Transfer**" has the meaning given in Section 6.1.1(e).

"**Loan Agreement**" has the meaning given in the recitals.

"**Local Bank**" means, as of the Closing Date, M&T Bank (or any replacement bank substituted therefor pursuant to the provisions of Section 12.17 of the Building Loan Disbursement Agreement (as incorporated herein pursuant to Section 1.3 hereof)).

"**Material Contract Amendment**" has the meaning given in Section 6.2.

"**Payment Acknowledgment Deliverables Requirement**" means the delivery by the Borrower to the Administrative Agent, the Disbursement Agent and the Construction Consultant of reasonable documentary evidence of payment with regard to such Project Costs, such as unconditional lien wavers or releases, affidavits**,** agreements, invoices marked "paid in full," or other reasonable evidence of performance and receipt of payment with regard to all payments made to date from each counterparty to a Contract with regard to the applicable Project Cost (and with regard to the last Disbursement hereunder, reasonable documentary evidence of final completion and full and final payment with regard to all such Project Costs), in each case, reasonably acceptable to the Administrative Agent in consultation with the Construction Consultant with regard to all payments made to date to such counterparty (*other than* (i) from any counterparty to a Contract with a contract price of less than $1,000,000 individually; and (ii) for the period prior to Final Completion, with respect to Permitted Amounts).

"**PDA Bond Amount Share**" means a designated amount, in Dollars, of the Available Gaming Commission Bond Amount that has been identified by Borrower in each Project Cost Schedule delivered hereunder, and which, when added to the then-applicable BLDA Bond Amount Share, shall exactly equal the then-remaining Available Gaming Commission Bond Amount at such time.

"**PDA Share**" has the meaning given in the Building Loan Disbursement Agreement.

"**Permitted Amounts**" means, without duplication, and taking into account any amounts for the same under the Building Loan Disbursement Agreement, (a) Completion Items with an aggregate Final Completion Amount less than $4,500,000; (b) Disputed Amounts with an aggregate value less than $6,000,000; and (c) Retained Amounts, if any, with an aggregate value less than $10,000,000, in each case, as certified by the Borrower and reasonably confirmed by the Construction Consultant, and in each case which have been reserved for in the Project Company

Funds Account (such amounts, the "**Reserved Amounts**"), or otherwise insured over or bonded over to the reasonable satisfaction of the Administrative Agent.

"**Project**" has the meaning given in the recitals.

"**Project Budget Amendment Certificate**" has the meaning given in Section 6.1.3.

"**Project Cash Management Account**" means the Project Cash Management Account, which shall be established by Borrower with the Local Bank, designated as such pursuant to Section 2.2.3 or opened as a replacement account therefor in accordance with Section 12.17 of the Building Loan Disbursement Agreement (as incorporated herein pursuant to Section 1.3 hereof), subject to a Control Agreement, and subjected to perfected liens to secure the Obligations.

"**Project Company Funds Account**" means the Project Company Funds Account established by Borrower with the Holding Account Bank, designated as such pursuant to Section 2.2.1 or opened as a replacement account therefor in accordance with Section 12.17 of the Building Loan Disbursement Agreement (as incorporated herein pursuant to Section 1.3 hereof), subject to a Control Agreement, and subjected to perfected liens to secure the Obligations.

"**Project Costs**" means the costs to be incurred in connection with the Project pursuant to the Project Budget.

"**Project Cost Schedule**" means an itemized cost schedule in the form attached as Schedule 1 to Exhibit B, as updated from time to time in accordance with this Agreement.

"**Project Cost Schedule Certificate**" has the meaning given in Section 6.5.

"**Project Disbursement Account**" means the Project Disbursement Account established by Borrower with the Local Bank, designated as such pursuant to Section 2.2.2 or opened as a replacement account therefor in accordance with Section 12.17 of the Building Loan Disbursement Agreement (as incorporated herein pursuant to Section 1.3 hereof), subject to a Control Agreement and subjected to perfected liens to secure the Obligations.

"**Realized Savings**" means, as of any date, with respect to any Line Item in the Project Budget, the excess of (i) the Remaining Budgeted Amount for such Line Item over (ii) the Remaining Costs with respect to such Line Item; *provided, however,* that Realized Savings for any Line Item shall be deemed to be zero unless and until the Borrower has delivered an executed Project Budget Amendment Certificate (together with all exhibits thereto) which includes such Realized Savings and such certificate has been approved by the Construction Consultant (which approval shall not be unreasonably withheld, delayed or conditioned) and, to the extent required under Section 6.1, the Administrative Agent (which approval shall not be unreasonably withheld or delayed); *provided, further, however*, that no Realized Savings shall be obtainable with respect to the "**Project Contingency**" Line Item or the "**Flex Contingency**" Line Item under the Project Budget.

"**Reimbursable FF&E Amounts**" means, at any time, the amount of funds Disbursed pursuant to the provisions of Section 6.12 hereof and (a) that do not consist of proceeds of any FF&E Agreement; (b) have been utilized by Borrower to pay FF&E Costs (that, for the avoidance of doubt, would have otherwise been payable with the proceeds of FF&E Agreements); and (c) for which there has not yet been deposited a corresponding FF&E Reimbursement.

"**Remaining Budgeted Amount**" for any Line Item on the Project Budget means the Total Budgeted Amount for such Line Item in the Project Budget less the amount previously spent with respect to such Line Item.

"**Remaining Costs**" means, at any time and with respect to any Line Item in the Project Budget, the amount of funds reasonably expected to be expended by the Borrower after the date of determination to complete the matters represented by such Line Item and for the materials and services used to complete such tasks that remain unpaid at such time through Final Completion, including, for the avoidance of doubt, Completion Items, Retained Amounts and the full amount of any claims for payments by Contract counterparties that are being disputed by the Borrower, as certified at any such time by the Borrower and confirmed by the Construction Consultant. Notwithstanding the foregoing, the term "Remaining Costs" shall not include FF&E Costs.

"**Required Contingency**" means a minimum amount required to be funded by the Borrower and maintained with respect to the "**Project Contingency**" Line Item in the Project Budget, which shall be, on the Closing Date, an amount equal to $7,070,000, and which shall be recalculated, from time to time, in accordance with the methodology set forth on Schedule 2 to Exhibit B.

"**Reserved Amounts**" has the meaning given in the definition of "**Permitted Amounts**" hereunder.

"**Reserved Lien Funds**" means such reserves as may be required to be maintained with regard to Senior Permitted Liens, as more fully set forth in Section 6.02 of the Loan Agreement.

"**Retained Amounts**" means, at any given time, amounts that would otherwise have accrued and be owing under the terms of a Contract (or, if applicable, with regard to a Line Item hereunder) but which at such time (in accordance with the terms of the Contract or applicable law) are being withheld by the Borrower from payment thereunder.

"**Second Line Item**" has the meaning given in Section 6.1.1(c).

"**Section 22 Lien Law Affidavit**" means a true statement under oath verified by the Borrower as required by Section 22 of the Lien Law and otherwise in form and substance reasonably acceptable to Administrative Agent. A copy of the Section 22 Lien Law Affidavit as in effect as of the Closing Date is attached as Exhibit N to the Building Loan Disbursement Agreement.

"**Title Search**" has the meaning given in Section 4.1.2(1).

"**Total Budgeted Amount**" with respect to any Line Item in the Project Budget at any given time means the total amount budgeted for such Line Item in the Project Budget (whether or not such amount has been expended) at such time in accordance with this Agreement.

"**Trigger**" has the meaning given in Section 3.2.

"**Trigger Notice**" has the meaning given in Section 3.2.

"**Unincorporated Materials**" has the meaning given in Section 4.1.2(d).

1.2 Rules of Interpretation. Headings in this Agreement are for convenience only and shall not be considered or referred to in resolving questions of interpretation of this Agreement. The singular includes the plural, and the plural includes the singular. The word "or" is not exclusive. Except as otherwise defined, accounting terms have the meanings assigned to them by GAAP, as applied by the accounting entity to which they refer. The words "include," "includes" and "including" shall be deemed to be followed by "without limitation". A reference in a document to an Article, Section, Exhibit, Schedule, Annex or Appendix is to the Article, Section, Exhibit, Schedule, Annex or Appendix of such document unless otherwise indicated. Exhibits, Schedules, Annexes or Appendices to any document shall be deemed incorporated by reference in such document. In the event of any conflict between the provisions of this Agreement (exclusive of the Exhibits, Schedules, Annexes and Appendices thereto) and any Exhibit, Schedule, Annex or Appendix hereto, the provisions of this Agreement shall control. References to any document, instrument or agreement (x) shall include all exhibits, schedules and other attachments thereto, (y) shall include all documents, instruments or agreements issued or executed in replacement thereof, and (z) shall mean such document, instrument or agreement, or replacement or predecessor thereto, as amended, restated, modified and supplemented from time to time and in effect at any given time, to the extent such amendment, restatement, modification or supplement is made in accordance with the terms of this Agreement and the other Loan Documents, as the case may be. The words "hereof," "herein" and "hereunder" and words of similar import when used in any document shall refer to such document as a whole and not to any particular provision of such document unless the context demands otherwise. References to "days" shall mean calendar days, unless the term "Business Days" shall be used, except that any deadline to perform an obligation that falls on a day other than a Business Day shall be deemed extended until the next succeeding Business Day, other than the payment by any Loan Party of Debt Financing Costs, which shall be payable on the preceding Business Day. References to a time of day shall mean such time in New York, New York, unless otherwise specified.

1.3 Incorporation by Reference. The following Sections of the Building Loan Disbursement Agreement (including any subsections of any such Sections) are hereby incorporated herein by reference and made applicable hereto, *mutatis mutandis*: Section 1.3 (Joint and Several Liability); Section 8 (Limitation of Liability); Section 9 (Indemnity; Protections and Immunities); Section 11 (Substitution or Resignation of the Disbursement Agent); and Section 12 (Miscellaneous).

2. Appointment of Disbursement Agent; Establishment of Accounts; Related Provisions.

2.1 Appointment of the Disbursement Agent. The Disbursement Agent is hereby appointed by the Company, the Collateral Agent, and the Administrative Agent as disbursement agent hereunder, and the Disbursement Agent hereby agrees to act as such and to instruct the applicable Account Bank to deposit into, or disburse from, the applicable Accounts all cash, payments and other amounts to be deposited into any applicable Account or to be disbursed from any applicable Account pursuant to the terms of this Agreement.

2.2 Establishment of Accounts.

2.2.1 ***Establishment of Holding Account***.

(a) Concurrently with the execution and delivery of this Agreement, the Borrower shall enter into a Control Agreement, pursuant to which the Holding Account Bank as the account bank thereunder shall establish and maintain the Project Company Funds Account. The Borrower shall cause such Account to be maintained at all times until such Account is permitted to be closed in accordance with Section 4.3.

(b) On the Closing Date, there shall be deposited into the Project Company Funds Account such amounts, if any, as shall have been designated in that certain funds flow memorandum delivered under the Loan Agreement in connection with the Closing Date.

(c) Except as specifically provided herein or in the Loan Agreement, until termination of this Agreement, the Borrower shall deposit into the Project Company Funds Account:

(1) until the Casino Opening Date all of its and the other Loan Parties' cash inflows necessary for the Project to be In Balance, and liquidated damages received from counterparties to Contracts, in each case (i) net of any commercially reasonable costs and expenses in obtaining such amounts, and taxes related thereto, and (ii) excluding any amounts which are applied towards repayment of the Loans in accordance with the terms of the Loan Agreement;

(2) all amounts funded for the account of the Borrower by the Completion Guarantor in respect of Project Costs (or any other amounts funded for the account of the Borrower by the Completion Guarantor and not otherwise deposited into the "Building Loan Company Funds Account" (under and as defined in the Building Loan Disbursement Agreement)) pursuant to the Completion Guaranty at the times and on the terms contemplated by such Completion Guaranty;

(3) all cash collateral in respect of the Gaming Commission Bond that is released to the Borrower by the bonding company, surety or trustee on behalf thereof;

(4) delay in startup or business interruption proceeds not otherwise deposited into the "Building Loan Interest Reserve Account" (under and as defined in the Building Loan Disbursement Agreement);

(5) Cash equity in an aggregate amount equal to the AEV Minimum Amount, regardless of whether the Project is In Balance and regardless of any other equity contributed hereunder, including under Section 6.1.1 (such obligation, the "**AEV Minimum Contribution**"), which aggregate amount shall be deposited in such installments and by such dates as set forth on Exhibit G hereto; and

(6) all FF&E Reimbursements.

(d) Investment income or interest received from amounts on deposit in the Project Company Funds Account shall be deposited into the Project Company Funds Account.

2.2.2 ***Establishment of Project Disbursement Account***. Concurrently with the execution and delivery of this Agreement, the Borrower shall enter into a Control Agreement with the Local Bank, as the account bank thereunder, with respect to the Project Disbursement Account. The Borrower shall cause such Account to be maintained at all times until such Account is permitted to be closed in accordance with Section 4.6. On the Closing Date, there shall be deposited into the Project Disbursement Account such amounts, if any, as shall have been designated in that certain funds flow memorandum delivered under the Loan Agreement in connection with the Closing Date. Subject to such Control Agreement, and except for any amounts which may be deposited therein on the Closing Date (which amounts shall be permitted to be applied to the Project Costs for which such amounts were so deposited), the Borrower shall be permitted from time to time to draw checks on and otherwise withdraw amounts on deposit in the Project Disbursement Account to pay Project Costs then due and payable and reflected in the applicable Disbursement Request pursuant to which such amounts were transferred to the Project Disbursement Account. The Borrower shall cause investment income or interest received from amounts on deposit in the Project Disbursement Account to be deposited therein.

2.2.3 ***Establishment of Project Cash Management Account***. Concurrently with the execution and delivery of this Agreement, the Borrower shall enter into a Control Agreement with the Local Bank, as the account bank thereunder, with respect to the Project Cash Management Account. On the Closing Date, there shall be deposited into the Project Cash Management Account such amounts, if any, as shall have been designated in that certain funds flow memorandum delivered under the Loan Agreement in connection with the Closing Date. The Borrower shall be permitted from time to time after the Closing Date to request a Disbursement of funds from the Project Company Funds Account to the Project Cash Management Account (including to replace amounts previously drawn from, and/or to increase the funds on deposit in, the Project Cash Management Account) by including a request to such effect in a Disbursement Request and satisfying the conditions precedent set forth in Section 4.1.2; *provided, however,* that the balance of funds on deposit in the Project Cash Management Account may not exceed the Cash Management Allowance at any time, and, in connection with any Disbursement Request, the

Borrower shall certify to the Disbursement Agent that the aggregate balance of funds on deposit in the Project Cash Management Account does not and will not exceed the Cash Management Allowance (including after giving effect to any such Disbursement Request). Subject to such Control Agreement, the Borrower shall be permitted from time to time to draw checks on and otherwise withdraw amounts on deposit in the Project Cash Management Account to pay Project Costs then due and payable. The Borrower shall cause investment income or interest received from amounts on deposit in the Project Cash Management Account to be deposited therein until applied to the payment of Project Costs as described above.

2.3 Acknowledgment of Security Interest; Control. In order to secure the Obligations, the Borrower has pledged to the Collateral Agent, and created in favor of the Collateral Agent for the benefit of the Administrative Agent and the Lenders, a security interest in and to, the Accounts, all Cash, Cash Equivalents, financial assets, investment property, instruments, investments, securities entitlements and other securities or amounts at any time on deposit in or credited to the Accounts, and all proceeds of any of the foregoing. All moneys, Cash Equivalents, financial assets, investment property, instruments, investments, securities entitlements and other securities at any time on deposit in or credited to any of the Accounts shall constitute collateral security for the payment and performance of the Obligations and shall at all times be subject to the control of the Collateral Agent (for the benefit of the Administrative Agent and the Lenders), and shall be held in the custody of the securities intermediary or account bank under the applicable Control Agreement in trust for the purposes of, and on the terms set forth in, such Control Agreement.

2.4 The Borrower's Rights. The Borrower shall not have any rights or powers with respect to any amounts in any Holding Accounts, or any part thereof, except (a) as provided in the applicable Control Agreements and (b) the right described in the Loan Documents to have such amounts applied in accordance with the provisions hereof and the Loan Documents. Furthermore, for purposes of clarification, in no event shall any Holding Accounts (or amounts distributed from the Holding Accounts for the payment of Project Costs) be held, maintained, received or otherwise controlled by the Borrower.

3. Certain Responsibilities of the Disbursement Agent.

3.1 Instructions for Disbursements from Holding Account. Except for the payments described in Section 3.3 and subject to Sections 3.5 and 4.1.3, the Disbursement Agent shall, in accordance with a Disbursement Request, instruct the Account Bank (pursuant to the provisions of the applicable Control Agreement) to disburse funds from Project Company Funds Account to pay for Project Costs in accordance with the Borrower's Disbursement Requests after approval thereof in accordance with the terms hereof and only upon satisfaction (or waiver by the Administrative Agent) of the conditions to disbursement set forth herein. For the avoidance of doubt, instructions from the Disbursement Agent for the payment of amounts described in Section 3.3 shall be given regardless of whether the conditions precedent to disbursement have been satisfied or waived and regardless of whether an Event of Default has occurred or is continuing.

3.2 Transfer of Funds at Direction of the Administrative Agent. Subject to Sections 3.3, 3.5 and 4.1.3, but notwithstanding any other provision to the contrary in this Agreement (but subject to the last sentence of this Section 3.2), from and after the date the Disbursement Agent

receives written notice from the Borrower, the Collateral Agent or the Administrative Agent that an Event of Default exists, and until such time, if ever, as the Disbursement Agent receives written notice from the Collateral Agent or the Administrative Agent that such Event of Default no longer exists, the Disbursement Agent shall not instruct the Account Banks to disburse any funds from such Accounts, and any withdrawal or transfer of amounts from the Accounts shall be made at the direction of the Administrative Agent; *provided, however*, that (i) any wires funded from or checks drawn on either Disbursement Account for payments approved hereunder in connection with a prior Disbursement Request shall be honored to the extent of available funds on deposit therein notwithstanding the continuance of any such Event of Default; and (ii) Disbursement Requests submitted by the Borrower hereunder solely for payments of (1) insurance premiums on insurance policies required for the Project under the Loan Documents, (2) Taxes assessed against the Project, or (3) other payments to Governmental Authorities, shall be honored to the extent of Disbursements necessary for payment of such amounts notwithstanding the continuance of any such Event of Default, unless and until the Administrative Agent shall have notified the Disbursement Agent that such Disbursements are not to be made or the Collateral Agent shall have issued a Trigger Notice (as defined below); *provided further, however,* that in the event the Administrative Agent determines in its sole discretion that an Event of Default would be cured upon the making of the subject Disbursement, the Administrative Agent shall so notify the Disbursement Agent and the Disbursement Agent shall, so long as all other conditions precedent to the subject Disbursement have been satisfied, instruct the Account Banks to disburse the funds requested by the subject Disbursement. Such Disbursement may be made, at the request of the Administrative Agent, directly to the payee(s) thereof. The parties hereto expressly acknowledge and agree that in the event that the Collateral Agent shall have issued a prohibition notice, notice of sole control or other similar direction (a "**Trigger Notice**") to any Account Bank under a Control Agreement to the effect that such Account Bank shall only act at the direction of the Collateral Agent with regard to the Accounts thereunder (such event, a "**Trigger**"), then during the occurrence and continuation of the Event of Default giving rise to such Trigger, no further direction by the Disbursement Agent shall be given with regard to any Account hereunder. Upon delivery, if ever, of written notice rescinding such Trigger Notice by the Collateral Agent to the Disbursement Agent, disbursement of funds shall occur in accordance with the terms of this Agreement.

3.3 Payment of Compensation.

3.3.1 ***Compensation of the Disbursement Agent, the Administrative Agent and the Construction Consultant***. On each anniversary of the Closing Date (or on the first Business Day after such anniversary if such anniversary does not fall on a Business Day), the Disbursement Agent shall instruct the Account Bank under the applicable Control Agreement to transfer from the applicable Account (as determined pursuant to Section 4.2) directly to Credit Suisse AG, Cayman Islands Branch and CBRE, Inc., a Delaware corporation, d/b/a Inspection & Valuation International (or its respective successors or assigns), as applicable, which amount shall constitute compensation for services to be performed by it in its respective capacities as the Disbursement Agent, the Administrative Agent and the Construction Consultant during such year.

3.3.2 ***Power of Attorney***. The instructions contemplated by this Section 3.3 to be given by the Disbursement Agent shall be made without the requirement of obtaining any

further consent or action on the part of the Borrower with respect thereto, and the Borrower hereby constitutes and appoints the Disbursement Agent its true and lawful attorney-in-fact to give such instructions and, if applicable, make such disbursements, and this power of attorney shall be deemed to be a power coupled with an interest and shall be irrevocable.

3.4 Periodic Review.

3.4.1 ***Review by Disbursement Agent***. The Disbursement Agent shall act in good faith in the performance of its duties hereunder. Commencing upon execution and delivery hereof, the Disbursement Agent shall have the right, but shall have no obligation, to meet periodically at reasonable times upon reasonable advance notice with representatives of each of the Administrative Agent, the Borrower, the Construction Consultant and such other employees, consultants, counsel or agents as the Disbursement Agent shall reasonably request to be present for such meetings. In addition, the Disbursement Agent shall have the right, but shall have no obligation, at reasonable times during customary business hours and at reasonable intervals upon prior notice, to review, to the extent it deems reasonably necessary or appropriate to permit it to perform its duties hereunder, all information (including Contracts) supporting any Disbursement Request and any certificates in support of any of the foregoing. The Disbursement Agent shall be entitled, but shall have no obligation, to examine, copy and make extracts of the books, records, accounting data and other documents of the Borrower or the other Loan Parties which are reasonably necessary or appropriate to permit it to perform its duties hereunder, including bills of sale, statements, receipts, contracts or agreements to the extent related to any items covered by the Project Budget (excluding each of the foregoing which is subject to attorney-client privilege or attorney-work product). The rights of the Disbursement Agent under this Section 3.4 shall not (a) extend any review or response periods granted to the Agents or the Construction Consultant under this Agreement, provided that the Borrower or the other Loan Parties are reasonably cooperating to provide Disbursement Agent with the requested information; or (b) be construed as an obligation, it being understood that the Disbursement Agent's duty is solely limited to act upon certificates and Disbursement Requests submitted by the Borrower and instructions of the Collateral Agent and/or the Administrative Agent, as applicable, pursuant to the terms hereof (and, in the case of Section 3.4.2, invoices submitted by the Construction Consultant), and the Disbursement Agent shall be protected in acting upon any Disbursement Request which appears to be valid on its face and to be duly executed by an authorized representative of the Borrower.

3.4.2 ***Review by Construction Consultant***. The Borrower shall permit the Construction Consultant (acting as a representative for the Administrative Agent, the Collateral Agent and the Disbursement Agent) to meet periodically at reasonable times during customary business hours and at reasonable intervals with representatives of the Borrower, the Disbursement Agent, and such other employees, consultants, counsel or agents as the Administrative Agent, the Collateral Agent or the Construction Consultant shall reasonably request to be present for such meetings. Subject to safety-related requirements, the Borrower shall permit the Construction Consultant (and in the case of clause (c), the Insurance Advisor) (a) to perform such inspections of the Real Property and the Project as it deems reasonably necessary or appropriate in the performance of its duties on behalf of the Administrative Agent, the Collateral Agent and the Disbursement Agent, (b) at reasonable times during customary business hours upon reasonable prior notice to review, to

the extent it deems reasonably necessary or appropriate to permit it to perform its duties, and all information supporting the amendments to the Project Budget, amendments to any Contracts, any Disbursement Request and any certificates in support of any of the foregoing, to inspect materials stored at any Mortgaged Property, the Project, or off-site facilities where materials designated for use in the Project are stored, and (c) to review the insurance required pursuant to the terms of the Loan Documents. The Construction Consultant shall (i) participate in such meetings, at reasonable times during customary business hours and at reasonable intervals, with the Borrower, the Construction Manager, the Architect and/or other employees, consultants, counsel or agents of the Borrower as the Borrower may from time to time reasonably request and (ii) upon the Borrower's request, review and provide comments to "pencil copy requisitions" in advance of the Borrower's submission of Disbursement Requests. The Borrower hereby authorizes the Administrative Agent, the Collateral Agent, the Disbursement Agent and the Construction Consultant to contact, after the occurrence and during the continuation of an Event of Default, any payee for purposes of confirming receipt of progress payments; *provided, however,* that that the Administrative Agent, the Collateral Agent and the Disbursement Agent shall have no obligation to contact (or cause the Construction Consultant to contact) any payee to so confirm. In addition, the Administrative Agent, the Collateral Agent and the Disbursement Agent (or the Construction Consultant on their behalf) shall be entitled to (at such Person's sole cost and expense, except after the occurrence and during the continuation of an Event of Default, whereupon such costs and expenses shall be for the account of Borrower) examine, copy and make extracts of the books, records, accounting data and other documents of the Borrower or the other Loan Parties to the extent related to any items covered by the Project Budget or the performance by the Construction Consultant of its duties hereunder (excluding each of the foregoing which is subject to attorney-client privilege or attorney-work product). Upon the occurrence and during the continuation of an Event of Default, at the request of the Administrative Agent, the Collateral Agent, the Disbursement Agent or the Construction Consultant, the Borrower shall from time to time deliver to the Administrative Agent, the Collateral Agent, the Disbursement Agent and the Construction Consultant a Project Cost Schedule for the Project. Subject to safety-related requirements, the Borrower agrees to reasonably cooperate and shall cause other Loan Parties and each other Contract counterparty to reasonably cooperate, with the Construction Consultant in assisting the Construction Consultant to perform its duties on behalf of the Administrative Agent, the Collateral Agent and the Disbursement Agent and exercising its review and inspection rights hereunder to take such further steps as the Administrative Agent, the Collateral Agent, the Disbursement Agent or the Construction Consultant reasonably may request in order to facilitate the performance of such obligations or the exercise of such rights.

3.5 Special Procedures for Unpaid Vendors. If an Event of Default has occurred and is continuing, the Borrower agrees that the Disbursement Agent may, but shall not be obligated to, make or cause to be made advances and transfers of any or all sums in the Accounts directly into the account of any payee for amounts due and owing to them from the Borrower pursuant to a Contract without further authorization from the Borrower and the Borrower hereby constitutes and appoints the Disbursement Agent as its true and lawful attorney-in-fact to make or cause the making of such direct payments and this power of attorney shall be deemed to be a power coupled with an interest and shall be irrevocable; *provided, however,* that the Disbursement Agent shall not exercise its rights under this power of attorney except as directed in writing by the Collateral Agent or the Administrative Agent. No further direction or authorization from the Borrower shall be

necessary to warrant or permit the Disbursement Agent to make or cause the making of such advances in accordance with the foregoing. The Disbursement Agent shall consult with, and may (but shall not be obligated to) seek direction from, the Construction Consultant in making any advances or transfers under this Section 3.5. The Disbursement Agent shall have no liability for any advances or transfers made in accordance with this Section 3.5 absent bad faith, fraud, gross negligence or willful misconduct (as determined by a final and unappealable judgment of a court of competent jurisdiction).

4. Disbursements.

4.1 Procedure for Approving Disbursements.

4.1.1 ***Disbursement Requests***.

(a) The Borrower shall have the right from time to time, no more frequently than once per calendar month, (the estimated draw schedule for which, as set forth in the Project Budget, may, for the avoidance of doubt, be varied by Borrower subject to the provisions of Section 6 hereof), to submit to the Disbursement Agent a request for the disbursement of funds from the Project Company Funds Account (in accordance with Section 4.2) substantially in the form of Exhibit A (a "**Disbursement Request**"), together with the exhibits attached thereto, as further described below. Notwithstanding the above, the Borrower shall submit a Disbursement Request hereunder only on dates on which it concurrently submits (and is permitted to submit) a Disbursement Request pursuant to the terms of the Building Loan Disbursement Agreement; *provided*, *however*, that such requirement shall not apply from and after the date that all funds to be disbursed pursuant to the terms of the Building Loan Disbursement Agreement shall have been fully disbursed. The Borrower shall not be entitled to any Disbursement unless and until a final, executed Disbursement Request, with all exhibits and attachments thereto, has been properly completed and submitted to the Disbursement Agent and the Construction Consultant in accordance with this Section 4.1. For clarification, disbursements with respect to Project Costs made on the Closing Date shall be made pursuant to procedures approved by the Disbursement Agent. Disbursement Requests shall be acted on as follows:

(i) Within five (5) Business Days following the date of the submission of a Disbursement Request to the Disbursement Agent, the Construction Consultant and the Administrative Agent (the "**Submission Date**"), the Construction Consultant shall provide written notice to the Disbursement Agent and the Administrative Agent that it either approves or does not approve such Disbursement Request (it being understood that Construction Consultant's approval of a Disbursement Request shall be evidenced by its execution of its certificate in the form of Exhibit 1 to Exhibit A); and

(ii) Within five (5) Business Days following the receipt of an approval of the Disbursement Request from the Construction Consultant (but no earlier than ten (10) Business Days from the Submission Date), which Disbursement Request shall, subject to the Disbursement Agent's approval pursuant to this clause

(ii), be final and fully executed by the applicable parties thereto, the Disbursement Agent shall either (X) instruct the Account Bank to make the Disbursements requested in such Disbursement Request that satisfy each of the conditions set forth in Section 4.1.2; or (Y) notify the Borrower and the Administrative Agent in writing if it determines that such Disbursement Request fails to satisfy any such conditions, which notice shall describe the nature of such failure in reasonable detail.

(b) Such Disbursement shall be made in the amount specified in such approved Disbursement Request from the Holding Account specified in the approved Disbursement Request in accordance with Section 4.2 to the applicable Disbursement Account(s) specified in such Disbursement Request.

(c) Notwithstanding any provision in Sections 4.1.1 or 4.1.2 to the contrary, the initial Disbursement on the Closing Date shall be made pursuant to such documentation and terms as are agreed upon by the Borrower, the Disbursement Agent, the Administrative Agent and the Construction Consultant.

(d) With regard to any transfers under this Agreement, it is understood that, in certain circumstances, the Account Bank may request that the Borrower provide additional documentation to effectuate such transfer, and the Borrower acknowledges that such transfers may not occur until it provides such documentation (and the Borrower in any event agrees to use commercially reasonable efforts to provide such documentation).

4.1.2 ***Conditions to Disbursements***. The Disbursement Agent's approval of a Disbursement Request as provided in Section 4.1.1(a)(ii) shall be subject to the following conditions. Upon receipt of the Construction Consultant's approval of the Disbursement Request and satisfaction of the conditions described below, the Disbursement Agent shall instruct the Account Bank to make the Disbursements specified in the corresponding Disbursement Request in accordance with Section 4.1.1(b):

(a) The Borrower shall have submitted to the Disbursement Agent a Disbursement Request as provided for herein pertaining to the amounts requested for disbursement, together with (i) all schedules thereto substantially in the form contemplated thereby; (ii) any lien releases and affidavits (if any**)** and agreements to the extent customarily obtained from such payees; (iii) all certifications required to be included in the Disbursement Request, including a certification by the Borrower that the Completion Date (to the extent it has not already occurred) is expected to occur on or before the Scheduled Completion Date and the Casino Opening Date (to the extent it has not already occurred) is expected to occur on or before the Scheduled Casino Opening Date; (iv) a certification by the Borrower of compliance with the then-applicable Project Budget and Project Cost Schedule; and (v) the certifications of the Construction Consultant substantially in the form of Exhibit 1 to the Disbursement Request;

(b) The Borrower shall have confirmed that the Administrative Agent, the Collateral Agent and the Construction Consultant shall have received (i) copies of each Key Contract executed on or before the date of such Disbursement Request, together with a

Consent signed by the counterparty to such Key Contract if and to the extent required under Section 6.3; and (ii) copies or originals, as the case may be, of all performance security, parent guaranties, bonds or other performance assurances as any counterparty to such Key Contract may be required to provide pursuant to such Key Contract (which performance assurances shall be in form and substance reasonably satisfactory to Administrative Agent and otherwise consistent with customary industry standards, and shall name the Collateral Agent as a co-obligee or beneficiary, as applicable);

(c) With regard to any Disbursement occurring subsequent to the Closing Date, the Borrower shall have satisfied the Payment Acknowledgment Deliverables Requirement;

(d) The Borrower shall have delivered to the Construction Consultant (and the Disbursement Agent shall have received written confirmation of such delivery from the Construction Consultant) a written inventory substantially in the form of Schedule 4 to the Borrower's Disbursement Request identifying all materials, machinery, fixtures, furniture, equipment or other items purchased or manufactured for incorporation into the Project for which the Borrower has paid, or will pay from the Disbursement, all or a portion of the purchase price thereof but which, at the time of the Disbursement Request, (x) are not located at the Project site, or (y) are located at the Project site but are not expected to be incorporated into the Project within one hundred eighty (180) days after such Disbursement Request (the materials described in clauses (x) and (y), collectively, the "**Unincorporated Materials**") and including the cost of such Unincorporated Materials, together with evidence reasonably satisfactory to the Construction Consultant that the following conditions have been satisfied with respect to such Unincorporated Materials:

(i) all Unincorporated Materials for which full payment has previously been made or is being made with the proceeds of the Disbursement to be disbursed are, or will be upon full payment, owned by the Borrower, and all lien rights or claims of the supplier have been or will be released simultaneously with such full payment and such payment shall be evidenced by paid invoices, the bills of sale, certificates of title or other evidence reasonably satisfactory to the Construction Consultant;

(ii) the Unincorporated Materials are consistent with the Final Plans and Specifications;

(iii) all Unincorporated Materials are (to the extent not in fabrication) properly inventoried, securely stored, protected against theft and damage at the Project site or at such other location which has been specifically identified by its complete address to the Construction Consultant (or if the Borrower cannot provide the complete address of the current storage location, the Borrower shall list the name and complete address of the applicable contracting party supplying or manufacturing such Unincorporated Materials);

(iv) all Unincorporated Materials are insured against casualty, loss and theft for an amount equal to their replacement costs under policies naming the Collateral Agent as an additional insured and the Disbursement Agent as loss payee to the extent required under the Loan Documents;

(v) the amounts paid by the Borrower in respect of all Unincorporated Materials, when combined with the amounts paid by the Borrower in respect of "Unincorporated Materials" under and as defined in the Building Loan Disbursement Agreement (in each case, that constitute Unincorporated Materials or "Unincorporated Materials" under and as defined in the Building Loan Disbursement Agreement at the time the calculation of such amounts is made for the purposes of this clause (v)), are at no time more than $40,000,000 in the aggregate, plus any additional amounts reasonably approved by the Disbursement Agent in consultation with the Construction Consultant; and

(vi) the Construction Consultant shall have confirmed the satisfaction of the condition required in subparagraph (iii) above in its reasonable discretion, and in connection therewith the Construction Consultant may, but shall not be required to, upon reasonable prior notice and at reasonable times, visit the site of and inspect the Unincorporated Materials at the Borrower's expense;

(e) The Disbursement Request on its face has been completed as to the information required therein and all required attachments, have been attached;

(f) No Disbursement Agent Responsible Officer shall have received a written notice (including a Disbursement Request) from any of the Borrower, the Collateral Agent, the Administrative Agent or the Construction Consultant (i) that a Default or an Event of Default exists (other than those that would be cured upon the making of the subject Disbursement, as hereinafter provided), or (ii) of any material error, inaccuracy, misstatement or omission of material fact in any Disbursement Request or in any exhibit or attachment thereto or any information provided by the Borrower which has not been theretofore corrected;

(g) The Borrower shall have paid or arranged for payment, out of the requested Disbursement or otherwise, of all fees, expenses, charges and Debt Financing Costs as defined in the Building Loan Disbursement Agreement due and payable under the Loan Documents, as certified by the Borrower to the Disbursement Agent;

(h) With respect to each Disbursement Request other than the first Disbursement Request issued hereunder, the Borrower shall have certified to the Disbursement Agent and substantiated to the Construction Consultant's reasonable satisfaction (as set forth in the Construction Consultant's certificate substantially in the form of Exhibit 1 to the Disbursement Request) in the manner contemplated by the Disbursement Request, that (i) the amounts previously drawn by the Borrower from the Disbursement

Accounts to pay Project Costs have, in fact, been used to pay Project Costs in accordance with the Project Budget; and (ii) after giving effect to the requested Disbursement, the balance in the Project Disbursement Account (other than any amounts on account of interest earned on amount on deposit therein) will not exceed the amount required to pay Project Costs then due and payable as specified in the applicable Disbursement Request and the balance in the Project Cash Management Account will not exceed the Cash Management Allowance;

(i) The Project shall be In Balance, as certified by the Borrower in the relevant Disbursement Request;

(j) The absence of any Default or Event of Default, as certified by the Borrower in the relevant Disbursement Request (other than those that would be cured upon the making of the subject Disbursement, as hereinafter provided);

(k) The Borrower shall have delivered to the Construction Consultant a written report of the fixtures, furniture and equipment purchased on or prior to the applicable Disbursement Request (or otherwise to be purchased with the proceeds of the subject Disbursement), the costs of which are included (or are to be included) in the "**FF&E"** Line Item or the "**Other FF&E**" Line Item, which report shall identify to which of such Line Items such costs have been allocated and shall otherwise be in form and substance reasonably acceptable to the Construction Consultant;

(l) To the extent that an Update Endorsement is not being simultaneously delivered pursuant to the terms of the Building Loan Disbursement Agreement because the "Accounts" thereunder (other than the Building Loan Interest Reserve Account) have been "Exhausted" (as defined therein), the Borrower shall have caused the Title Company to have delivered to the Administrative Agent, the Collateral Agent, the Disbursement Agent and the Construction Consultant a title search report, dated as of the date of such Disbursement (each such report, the "**Title Search")** which Title Search shall demonstrate that that there are no intervening Liens which may then or thereafter take priority over the Lien of the Mortgages (other than Senior Permitted Liens (but subject to Reserved Lien Funds)); and

(m) The Borrower has provided Disbursement Agent with copies of the most recent monthly statements from each Account Bank with regard to balances in the Accounts.

The Disbursement Agent shall be entitled to rely upon the certifications of the Borrower and the Construction Consultant in the relevant Disbursement Request in determining that the conditions specified in this Section 4.1.2 have been satisfied unless the Disbursement Agent shall have received further certifications indicating that prior certifications are inaccurate. For purposes of determining whether the condition to Disbursement set forth in Section 4.1.2(j) has been satisfied, any Default or Event of Default that would be cured upon the application of the requested Disbursement of funds shall not be deemed a Default

or Event of Default hereunder, and such curing Disbursement may be made, at the request of the Administrative Agent, directly to the payee(s) thereof.

4.1.3 ***Non-Satisfaction of Conditions; Direct Payment by Disbursement Agent***. In the event that any of the conditions of Section 4.1.2 described above has not been satisfied in respect of any Disbursement Request and for so long as such conditions are not satisfied (for the purposes of which determination the Disbursement Agent shall in all cases be entitled to rely solely upon the certificates and attachments thereto provided to the Disbursement Agent in accordance with the terms of this Agreement), the Disbursement Agent shall not instruct the Account Bank to disburse any funds from the Holding Accounts pursuant to a Disbursement Request, except as provided in Section 3.2 or 4.3, and unless otherwise instructed by the Administrative Agent.

4.2 Borrower's Reimbursement of Previously Funded Project Costs. If, at any time after the Closing Date, the Borrower shall be unable to satisfy the conditions precedent to any disbursement set forth in this Section 4 (other than the In-Balance requirement set forth in Section 4.1.2(i)), then the Borrower shall be entitled to pay Project Costs then due and owing from other funds available to the Borrower (other than amounts available under the Completion Guaranty), including from proceeds of Subordinated Indebtedness (to the extent permitted under the Loan Agreement) and to later seek reimbursement of such Project Costs from the Project Company Funds Account as part of a Disbursement Request as and when permitted in accordance with the terms of this Agreement at the time (if any) that the Borrower is able to satisfy all the conditions precedent to disbursement set forth in this Section 4 and provided that after giving effect to such reimbursement, the Project shall be In Balance. To the extent that the payment of such Project Costs was made with the proceeds of equity contributions or the proceeds of Subordinated Indebtedness (to the extent permitted under the Loan Agreement) made to the Borrower after the Closing Date, the Borrower shall be permitted to repay or distribute such reimbursed amounts to its members or the applicable providers of such Subordinated Indebtedness, as applicable, as and to the extent provided in the Loan Documents. Notwithstanding the foregoing and for the avoidance of doubt, the Borrower may not seek reimbursement from the Project Company Funds Account, and may not repay or distribute any amounts to its members or providers of Subordinated Indebtedness, for any equity contributions or proceeds of Subordinated Indebtedness made to Borrower in order to satisfy the In Balance requirement or in connection with Section 2.1 of the Completion Guaranty.

4.3 Disbursement of Funds Following Completion. Borrower shall, within five (5) Business Days after the Completion Date, instruct the Disbursement Agent to instruct the Account Banks to apply all funds on deposit in the Project Company Funds Account and the Disbursement Accounts, if any, excluding the Reserved Amounts, to the repayment of Loans pursuant to Section 2.13(d) of the Loan Agreement (which, in accordance with Section 2.12(c) of the Loan Agreement, shall be made without prepayment penalty, premium or similar charge). If the Borrower shall fail to provide any instruction under this Section 4.3, then the Disbursement Agent, the Collateral Agent or the Administrative Agent shall be entitled to provide such instruction.

4.4 Final Disbursement. The Borrower shall, within two (2) Business Days after the Final Completion Date, instruct the Disbursement Agent to instruct the Account Banks to apply

all remaining funds in the Accounts to the repayment of the Loans in the manner set forth in Section 2.13(d) of the Loan Agreement (which, in accordance with Section 2.12(c) of the Loan Agreement, shall be made without any prepayment penalty, premium or similar charge). If the Borrower shall fail to provide such instruction, the Disbursement Agent, the Collateral Agent or the Administrative Agent shall be entitled to provide such instruction. At the request of the Borrower, and at the Borrower's expense, the Project Company Funds Account and the Disbursement Accounts may be closed following the transfers contemplated in this Section 4.5, and in any such case the Collateral Agent and/or the Administrative Agent, as applicable, shall promptly deliver any and all notices to the applicable Account Banks under the applicable Control Agreements necessary to close the applicable Accounts and terminate the applicable Control Agreements. Notwithstanding the foregoing, the Borrower shall also be permitted to close an Account in connection with the substitution of an Account Bank pursuant to Section 12.17 of the Building Loan Disbursement Agreement (as incorporated by reference pursuant to Section 1.3 hereof).

4.5 Cash Collateral Posting. The Borrower may from time to time request the Disbursement Agent to disburse funds from the Project Company Funds Account for a Cash Collateral Posting, and the Disbursement Agent shall comply with such request, *provided*, *however*, that the Borrower has provided the Disbursement Agent with a written certification that (a) such request complies with the definition of Cash Collateral Posting, (b) no Default or Event of Default has occurred and is continuing (or will result from such Cash Collateral Posting), and (c) the Project will be In Balance before and after giving effect to such Cash Collateral Posting.

5. Representations and Warranties. The Borrower represents and warrants on the Closing Date and on the date of each Disbursement, for the benefit of the Disbursement Agent, the Collateral Agent, the Administrative Agent and the Lenders, as follows:

5.1 Building Loan Disbursement Agreement. The Borrower simultaneously makes on such dates each of the representations and warranties set forth in Section 5 of the Building Loan Disbursement Agreement.

5.2 In Balance. The Project is In Balance.

5.3 Key Contracts.

5.3.1 The Administrative Agent and the Collateral Agent have been provided access to true, complete and correct copies of each of the Key Contracts in effect or required to be in effect as of the date this representation is made or deemed made (including all exhibits, schedules, side letters and disclosure letters referred to therein or delivered pursuant thereto, if any). On the Closing Date and on the date of each Disbursement, the Contracts listed on Exhibit F or, if any Loan Party has entered into any Key Contracts after the Closing Date, the Contracts listed on an amended Exhibit F delivered to the Disbursement Agent, the Administrative Agent and the Construction Consultant prior to the date of such Disbursement, constitute all of the Key Contracts that have been entered into as of the date of such Disbursement and that are necessary, at such time

and in light of the then-current state of development and construction of the Project, for the performance of the work or completion of the tasks contemplated in the Project Budget (excluding Contracts entered into in the ordinary course of business for services or materials that are easily obtained from replacement counterparties or vendors on similar terms). Each Key Contract listed on Exhibit F (as such Exhibit may be amended from time to time as noted above) is in full force and effect, enforceable against the Persons party thereto in accordance with its terms, subject only to bankruptcy, insolvency, moratorium and other similar laws and principles of equity.

5.3.2 All conditions precedent to the obligations of the respective parties (other than a Loan Party) under the Key Contracts to which a Loan Party is a party that are in effect as of the date this representation is made or deemed made have been satisfied, except for such conditions the failure of which to be satisfied would not reasonably be expected to have a Material Adverse Effect.

5.4 Project Budget; Project Cost Schedule.

5.4.1 The Project Budget (a) is, to the Borrower's knowledge, based on reasonable assumptions as to all legal and factual matters material to the estimates set forth therein and is consistent with the provisions of the Loan Documents and the Contracts in all material respects, (b) has been and will be prepared in good faith and with due care, (c) sets forth, for each Line Item, the total costs, when added to those in the Building Budget, anticipated to be incurred to achieve the Casino Opening Date on or before the Scheduled Casino Opening Date, to achieve Completion on or before the Scheduled Completion Date, and to achieve Final Completion promptly thereafter, (d) fairly represents in all material respects the Borrower's reasonable expectation as to the matters covered thereby as of its date, and (e) sets forth the total amount of Project Costs, including contingencies.

5.4.2 The Project Cost Schedule (as in effect from time to time) is true and correct in all material respects, has been prepared in good faith with due care, fairly represents Borrower's reasonable expectations as to the matters set forth therein and sets forth each of the items described in clauses (a) through (c) of Section 6.5.

5.5 Force Majeure. To Borrower's knowledge, no Person party to a Key Contract is affected by any Force Majeure Event that could reasonably be expected to have a Material Adverse Effect.

6. Covenants. The Borrower covenants and agrees, with and for the benefit of the Disbursement Agent, the Collateral Agent, the Administrative Agent and the Lenders, to comply with each of the following provisions:

6.1 Amendments to Project Budget. The Project Budget may be amended from time to time only in the manner set forth herein. The Borrower shall have the right, from time to time, to amend the Project Budget without the consent of the Construction Consultant, the Collateral Agent, the Disbursement Agent or the Administrative Agent to change the amounts allocated for specific Line Items in accordance with the provisions hereof. Notwithstanding the foregoing, to the extent that, at any time, the Remaining Costs with regard to a particular Line Item of the Project

Budget shall exceed the Remaining Budgeted Amount with respect to such Line Item, then the Borrower shall, on or prior to the next succeeding submission of a Disbursement Request or delivery of a Project Cost Schedule Certificate, as the case may be, amend the Project Budget in accordance with the provisions hereof to eliminate such excess. With respect to any amendment of the Project Budget: (a) the Borrower may not add any new Line Item or modify the description of any Line Item, without the consent of the Administrative Agent in consultation with the Construction Consultant (such approval not to be unreasonably withheld, delayed or conditioned), (b) for each Line Item, the Remaining Budgeted Amount must equal or exceed the Remaining Costs contemplated by such Line Item, and (c) the "**Project Contingency**" Line Item may not be reduced below the Required Contingency.

6.1.1 ***Sources of Funds for Line Item Increases***. A Line Item in the Project Budget may be increased only if the funds for such increase are made available in the Project Budget from one of the following categories:

(a) any Realized Savings from another Line Item;

(b) the reduction of the "**Project Contingency**" Line Item in the Project Budget; *provided, however,* that the "**Project Contingency**" Line Item may not be reduced below the Required Contingency;

(c) (i) additional Cash equity irrevocably contributed to the Borrower after the Closing Date in a manner not prohibited by the Loan Agreement, or (ii) Cash proceeds of Subordinated Indebtedness (to the extent permitted under the Loan Agreement) provided to the Borrower after the Closing Date, in each case, deposited (and recorded as such) in the Project Company Funds Account (excluding amounts funded pursuant to the Completion Guaranty);

(d) amounts funded pursuant to the Completion Guaranty for Project Costs;

(e) amounts transferred, dollar-for-dollar, from one Line Item (the "**First Line Item**") to another Line Item (the "**Second Line Item**") (such transfer, a "**Line Item Transfer**"); *provided however,* that (i) the Construction Consultant reasonably approves such Line Item Transfer; (ii) the amount so transferred from the First Line Item represented an estimated Project Cost as of the Closing Date; (iii) such previously-estimated Project Cost of the First Line Item is now supported by a Contract or by other documentation or evidence reasonably demonstrating that the actual Project Cost associated therewith is equal to or less than such estimate and that such Project Cost is appropriately included in the Second Line Item; and (iv) the amount being transferred to the Second Line Item is equal to the amount being withdrawn from the First Line Item; or

(f) the reduction of the "**Flex Contingency**" Line Item in the Project Budget.

Notwithstanding the foregoing, any increases to a Line Item in the Project Budget resulting from a Scope Change (pursuant to the terms of, and as defined in, the Building Loan Disbursement Agreement) may *not* be paid for with funds described in clause (d) above, but may be paid for with funds described in clauses (a), (c), (e) and (f) above in any amount, and may be paid for with funds described in clause (b) above, in an aggregate amount for all Scope Changes and when aggregated with amounts permitted under Section 6.1.1 of the Building Loan Disbursement Agreement, in an aggregate amount not to exceed the Scope Change Limit.

6.1.2 ***Project Budget Amendment Process***. Any amendment to the Project Budget shall be in writing. Any such amendment shall identify with reasonable particularity (a) the Line Item to be increased or decreased (if any), (b) the amount of the increase or decrease (if any), (c) in the event of an increase in a Line Item, the source proposed to be utilized to pay for the increase in accordance with Section 6.1.1, and (d) in the case of a decrease in a Line Item, the Realized Savings, Line Item Transfer or Contingency Transfer, as the case may be, in the amount of such decrease, and whether such Realized Savings or Contingency Transfer shall be the source of funds for a corresponding increase of a "Line Item" under and as defined in the Building Loan Disbursement Agreement or for deposit into the Building Loan Interest Reserve Account (as defined in the Building Loan Disbursement Agreement) in connection with Section 6.15 thereof. The parties acknowledge that a portion of any cost reduction achieved with respect to matters under a Contract may be payable to the applicable payee thereunder (subject to the conditions contained therein with respect to application of savings), and that, in such case, the entire reduction may not become Realized Savings. Any amounts of Realized Savings, Line Item Transfers, contingency amounts or previously allocated reserves so identified for use in connection with a particular Line Item thenceforth shall be deemed dedicated to the particular Line Item, unless and until the Project Budget is amended to reduce the amounts budgeted for the Line Item of the Project Budget.

6.1.3 ***Project Budget Amendment Certificate***. The Borrower shall submit the Project Budget amendment to the Disbursement Agent, the Administrative Agent and the Collateral Agent by an Officer's Certificate substantially in the form of Exhibit C (a "**Project Budget Amendment Certificate**"), together with the certificate of the Construction Consultant, as provided substantially in the form of Exhibit 1 to the Project Budget Amendment Certificate. Upon submission of such Project Budget Amendment Certificate, together with the Exhibits thereto, such amendment shall become effective hereunder, and the Project Budget for the Project shall thereafter be as so amended.

6.1.4 ***Contingency Transfer***. So long as all other applicable conditions for amendments to the Project Budget and Building Budget are met pursuant to this Agreement and the Building Loan Disbursement Agreement, respectively, amounts in respect of (1) the "**Project Contingency**" Line Item in the Project Budget hereunder, and (2) the "**Flex Contingency**" Line Item in the Project Budget hereunder, may be used (x) to pay for Building Loan Costs under the Building Loan Disbursement Agreement pursuant to a Disbursement Request hereunder that identifies such Building Loan Costs, and (y) for deposit into the Building Loan Interest Reserve Account (as defined in the Building Loan Disbursement Agreement) on account of an extension of the Scheduled Casino Opening Date and/or the Casino Opening Deadline pursuant to Section 6.15 of the Building Loan Disbursement Agreement (each, a "**Contingency Transfer**"); *provided,*

however, that (i) the "**Project Contingency**" Line Item may not be reduced below the Required Contingency; (ii) Interest Reserve Contingency Transfers shall not exceed the Interest Reserve Contingency Transfer Limit (each as defined in the Building Loan Disbursement Agreement); (iii) the Borrower shall have complied with any other applicable requirements of this Agreement and the Building Loan Disbursement Agreement in connection therewith; and (iv) the Project shall remain In Balance.

6.2 Contract Amendment Process. The Borrower shall not enter into or approve any Contract Amendment except as set forth in this Section 6.2. The Borrower shall have the right from time to time as provided below, to amend or permit the amendment of any Contract including to change the scope and/or the Borrower's payment obligations in connection therewith.

Any Contract Amendment that (i) results in a cost increase in a Key Contract in excess of $500,000 individually or, when taken together with all other Contract Amendments, results in a cost increase of $1,500,000 in the aggregate, (ii) when taken together with all related Contract Amendments and after giving effect to any new, related Contracts, results in a material lessening of the scope or quality thereunder, or (iii) when taken together with all additions hereunder and under Section 6.2 of the Building Loan Disbursement Agreement, results in the likely addition of three (3) or more weeks to the Project Schedule under the Building Loan Disbursement Agreement) (any such amendment described in clauses (i) through (iii) above, a "**Material Contract Amendment**") shall be in writing and shall identify with reasonable particularity all changes being made.

The Borrower shall not permit any Material Contract Amendment to become effective unless and until:

(a) the Borrower and all counterparties thereto have executed and delivered to the Disbursement Agent, the Construction Consultant, the Administrative Agent and the Collateral Agent the Material Contract Amendment (with the effectiveness thereof subject only to satisfaction of the applicable conditions in clauses (b), (c), (d), (e) and (f) below);

(b) the Borrower has submitted the Material Contract Amendment to the Disbursement Agent and the Administrative Agent together with an Officer's Certificate substantially in the form of Exhibit D (a "**Contract Amendment Certificate**"), together with the certificate of the Construction Consultant substantially in the form of Exhibit 1 to such Contract Amendment Certificate;

(c) if the Material Contract Amendment will result in an amendment to the Project Budget, the Borrower shall have complied with the requirements of Section 6.1;

(d) if the Material Contract Amendment will cause the Project to no longer be In Balance, then the Borrower shall have complied with the requirements of Section 6.4;

(e) if the Material Contract Amendment will result in an amendment to the Project Schedule, then the Borrower shall have complied with the requirements of Section 6.15 of the Building Loan Disbursement Agreement to the extent applicable; and

(f) if the Borrower delivered a payment or performance bond with respect to the applicable Key Contract, then, if requested by the Construction Consultant, the Borrower shall deliver a consent to such Material Contract Amendment from the surety under such bond. Contract Amendments which are not Material Contract Amendments shall not require compliance with the requirements set forth in this Section 6.2 or the approval of the Administrative Agent or any other Person to be effective. However, for the avoidance of doubt, nothing in this Section 6.2 shall relieve the Borrower from complying with the other provisions of this Agreement or the provisions of the Loan Agreement.

6.3 Contracts Entered into after the Closing Date. The Borrower may, from time to time after the Closing Date, enter into Contracts consistent with the Final Plans and Specifications (as defined in the Building Loan Disbursement Agreement) and the Project Budget (as each is in effect from time to time). Each such Contract shall be in writing. The Borrower shall not permit any new Key Contract to become effective unless and until:

6.3.1 the Borrower and all applicable counterparties to such Contract have executed and delivered the Key Contract (with the effectiveness thereof subject only to satisfaction of the conditions in Sections 6.3.2, 6.3.3, 6.3.4 and 6.3.5);

6.3.2 the Borrower has submitted to the Collateral Agent and the Administrative Agent each of the following, in each case, with a copy to the Disbursement Agent and the Construction Consultant, and, in each case, in form and substance reasonably satisfactory (including in respect of bonding and other support required under such Key Contract) to each of them:

(a) duly completed and executed copies of such Key Contract, together with an Officer's Certificate in substantially the form of Exhibit E (an "**Additional Contract Certificate**") and all exhibits, attachments and certificates required thereby;

(b) to the extent required by Section 4.1.2(b), copies of all performance and payment security (with original bonds delivered to the Collateral Agent) which shall be in form and substance reasonably satisfactory to Administrative Agent and otherwise commercially reasonable, and shall name the Collateral Agent as a co-obligee or beneficiary, as applicable); and

(c) duly executed consents to collateral assignment (each, a "**Consent**") from each counterparty, substantially in the form of Exhibit F to the Building Loan Disbursement Agreement with such modifications thereto as may be reasonably acceptable to the Administrative Agent, in each case, signed by the counterparty to such Key Contract; *provided, however,* that a Consent shall not be required where the amount to be paid to the counterparty under such Contract and all related Contracts with the same counterparty is

less than $4,000,000**,** or where the Administrative Agent in its sole discretion has waived such requirement in writing;

6.3.3 if entering into such Key Contract will result in an amendment to the Project Budget, the Borrower (a) shall notify the Construction Consultant, the Disbursement Agent, the Collateral Agent and the Administrative Agent and (b) shall have complied with the requirements of Section 6.1;

6.3.4 if entering into such Key Contract will cause the Project to no longer be In Balance, then the Borrower (a) shall notify the Construction Consultant, the Disbursement Agent and the Administrative Agent; and (b) shall have complied with the requirements of Section 6.4; and

6.3.5 if entering into such Key Contract will result in an amendment to the Project Schedule as defined in and under the Building Loan Disbursement Agreement, the Borrower (a) shall notify the Construction Consultant, the Disbursement Agent and the Administrative Agent, and (b) shall have complied with the requirements of Section 6.15 of the Building Loan Disbursement Agreement to the extent applicable.

6.4 In Balance Requirement. If the Project shall, at any time, not be In Balance, the Borrower shall cause either (i) additional Cash equity to be provided to the Borrower, or (ii) Cash proceeds of Subordinated Indebtedness (to the extent permitted under and subject to the limitations in the Loan Agreement) to be provided to the Borrower, and, in each case, the Borrower shall deposit (and record as such) such funds into the Project Company Funds Account in an amount sufficient to cause the Project to be In Balance. Such contributions and deposits may, subject to Section 6.1.1, be made from draws under the Completion Guaranty to the extent applicable to Project Costs.

6.5 Project Cost Schedule Certificate. The Borrower shall submit an Officer's Certificate substantially in the form of Exhibit B (a "**Project Cost Schedule Certificate**") to the Collateral Agent, the Administrative Agent, the Disbursement Agent and the Construction Consultant concurrently with the delivery of each report required under Section 6.6. Each Project Cost Schedule Certificate shall include a Project Cost Schedule dated no earlier than the last Business Day of the month immediately preceding the month in which such Project Cost Schedule Certificate is delivered, shall be delivered simultaneously with the delivery of the Building Loan Cost Schedule Certificate pursuant to Section 6.5 of the Building Loan Disbursement Agreement, and shall set forth:

(a) for each Line Item in the Project Budget, each of the items required on Exhibit B;

(b) (i) the actual investment income earned on the Project Company Funds Account through a date no earlier than thirty (30) days prior to the date of the Project Cost Schedule; and (ii) the additional amount of investment income which the Borrower reasonably anticipates will accrue on the Project Company Funds Account from such date

through the date that the Borrower reasonably anticipates that the Completion Date will occur;

(c) the then-applicable PDA Share, PDA Bond Amount Share and Construction Balancing Cash, and the amount of Construction Balancing Cash Transfers made to date; and

(d) a calculation, certified by the Borrower, of the Remaining Costs with respect to each Line Item in the Project Budget, the Required Contingency and the Available Project Funds as of such date. In addition, the Borrower shall, from time to time, deliver to the Administrative Agent and the Construction Consultant any back-up or supporting documentation or other information with respect to the items on the Project Cost Schedule as may be reasonably requested by any of them.

6.6 Reports. Prior to achieving Final Completion, the Borrower shall deliver to the Administrative Agent, the Construction Consultant and the Disbursement Agent, within thirty (30) days after the end of each month: (a) a monthly status report describing in reasonable detail the progress of the construction of the Project since the immediately preceding status report hereunder, including the cost incurred to the end of such month, an estimate of the time and cost required to complete the Project and such other information which the Administrative Agent, the Construction Consultant or the Disbursement Agent may reasonably request; and (b) all written progress reports, if any, provided directly to the Borrower by each counterparty pursuant to a Contract. To the extent that the information or documentation required to be delivered hereunder is duplicative of information or documentation required to be delivered by the Borrower under any other provision of this Agreement or is duplicative of any information provided under Section 6.10 of the Building Loan Disbursement Agreement, the reports delivered hereunder may cross-reference and/or incorporate such other information or documentation by direct reference.

6.7 Notices. Promptly, but in any event within 10 Business Days upon acquiring or giving notice or obtaining knowledge thereof, the Borrower shall provide to the Disbursement Agent, the Construction Consultant, the Collateral Agent and the Administrative Agent written notice of:

(a) any event, occurrence or circumstance which could reasonably be expected to cause the Project to not be In Balance or which could render the Borrower incapable of, or prevent the Borrower from meeting any material obligation under the Key Contracts as and when required thereunder; or

(b) any termination or event of default or notice thereof under any Key Contract, other than terminations of Key Contracts in the ordinary course due to completion of the matters thereunder.

Notwithstanding the foregoing, with regard to clause (a) above, the Borrower shall not be required to deliver duplicate notices under this Section 6.7 and Section 6.11 of the Building Loan Disbursement Agreement (*i.e.,* if a notice that meets the requirements of this Section 6.7 and Section 6.11 of the Building Loan Disbursement Agreement has been delivered pursuant to Section 6.11 of

the Building Loan Disbursement Agreement, no duplicate notice shall be required under this Section 6.7).

6.8 Retained Amounts. Retained Amounts shall not be released (a) unless the relevant counterparty has finally completed all of its work under its Contract or such release is required under the terms of the applicable Contract or applicable law; *provided, however*, that upon a written request from Borrower to the Construction Consultant, together with such information and documentation as the Construction Consultant may reasonably require, the Construction Consultant, in its discretion, may approve Borrower's release of a portion of the retainage following substantial completion of such counterparty's Contract but prior to final completion thereof; or (b) except as and when required pursuant to the terms of the applicable Contract or applicable law.

6.9 Project Schedule Amendments. The Borrower may, from time to time, amend the Project Schedule by delivering to the Disbursement Agent, the Construction Consultant and the Administrative Agent a revised Project Schedule; *provided, however*, that the same may be effected only in compliance with the applicable terms and conditions of the Building Loan Disbursement Agreement, including Section 6.15 thereof.

6.10 Application of Insurance, Condemnation and Other Recovery Event Proceeds. Any Restoration Proceeds deposited into the Project Company Funds Account and/or the Project Disbursement Account pursuant to Section 6.8 of the Building Loan Disbursement Agreement shall be applied (x) to the extent permitted hereunder, to pay Project Costs pursuant to the requirements of Section 4, or (y) to the extent required under the Loan Agreement, to prepay the Obligations.

6.11 Application of AEV Equity Contributions. Upon each contribution by Borrower of Cash equity into the Project Company Funds Account toward satisfaction of the AEV Minimum Amount as provided in Section 2.2.1(c) hereof (each such contribution, an "**AEV Equity Contribution**"), Borrower shall provide the Disbursement Agent with written notice pursuant to which Borrower shall (x) allocate a portion of such AEV Equity Contribution to be applied toward the payment of Building Loan Costs under the Building Loan Disbursement Agreement pursuant to a Disbursement Request hereunder that identifies such Building Loan Costs (such amount, the "**Allocated BLDA EV Equity**"); (y) allocate a portion of such AEV Equity Contribution to be applied toward the payment of Project Costs hereunder pursuant to the provisions hereof (such amount, the "**Allocated PDA EV Equity,**" and any remaining amounts in respect of such AEV Equity Contribution not so allocated by Borrower to Building Loan Costs or Project Costs, the "**Excess EAV Equity**"); and (z) instruct that any Excess EAV Equity be either (i) transferred from the Project Company Funds Account to the Building Loan Company Funds Account (such amount, the "**BLDA Balancing Cash**"), or (ii) transferred into the Golf Course Equity Account (as defined in the Loan Agreement) solely for the payment of Golf Course Expenditures (as defined in the Loan Agreement) (a "**Golf Course Contribution**"), in each case in such amounts as Borrower shall designate, whereupon Disbursement Agent shall instruct the Account Bank to so transfer the BLDA Balancing Cash, if any, to the Building Loan Company Funds Account, and the Golf Course Contribution, if any, into the Golf Course Equity Account; *provided, however,* that Borrower may utilize a portion of the Allocated BLDA EV Equity for purposes of a Cash Collateral Posting under

and pursuant to Section 4.5 hereof, whereupon the BLDA Bond Amount Share shall be deemed to be automatically increased by a corresponding amount (and shall be so reflected by Borrower in the next succeeding Building Loan Cost Schedule delivered under Section 6.5 of the Building Loan Disbursement Agreement). For the avoidance of doubt, the amount of such Allocated BLDA EV Equity so used for such Cash Collateral Posting shall no longer be deemed Allocated BLDA EV Equity. Borrower shall certify in such notices that the Project shall be In Balance after giving effect to each allocation and transfer set forth in this Section 6.11.

6.12 Reimbursable FF&E Amounts. The parties acknowledge that FF&E Costs under the "**FF&E**" Line Item hereunder are intended to be paid with the proceeds of FF&E Agreements, but that some such FF&E Costs may, pursuant to the Project Schedule, be required to be paid at a point in time when sufficient FF&A Agreements may not yet be in place. Thus, in order to provide for the payment of such FF&E Costs with funds in the Project Company Funds Account that would have otherwise been used for other Project Costs, and subject to the reimbursement of such funds with the proceeds of future FF&E Agreements (to the extent necessary for the Project to be In Balance), Borrower shall be permitted to request a Disbursement of proceeds from the Project Company Funds Account for payment of FF&E Costs under the "**FF&E"** Line Item; *provided, however,* that (a) all other applicable conditions to Disbursements hereunder are satisfied; and (b) the proceeds of any FF&E Agreements shall be used only to (i) originally purchase items representing FF&E Costs under the "**FF&E**" Line Item hereunder; or (ii) fund FF&E Reimbursements.

6.13 Construction Balancing Cash. The parties acknowledge that certain funds in the Project Company Funds Account, in excess of amounts otherwise required to satisfy all Project Costs identified under the Line Items hereunder, are intended to be utilized by Borrower for the payment of Building Loan Costs under the "**Construction Management Agreement**" Line Item as defined in the Building Loan Disbursement Agreement (such amounts then in the Project Company Funds Account, and as identified by Borrower in each Project Cost Schedule delivered hereunder, the "**Construction Balancing Cash**"). As part of any Disbursement Request hereunder, Borrower may request the Disbursement Agent to instruct the Account Bank to transfer all or a portion of such Construction Balancing Cash from the Project Company Funds Account to the Building Loan Company Funds Account for Disbursement (under and as defined in the Building Loan Disbursement Agreement) for the payment of such Building Loan Costs (a "**Construction Balancing Cash Transfer**"); *provided* that (a) at the time of such Construction Balancing Cash Transfer, there shall otherwise be insufficient funds in the "Accounts" (as defined in the Building Loan Disbursement Agreement) to satisfy Building Loan Costs then due and payable under the "**Construction Management Agreement**" Line Item as defined in the Building Loan Disbursement Agreement; and (b) Borrower shall certify that the Project shall be In Balance after giving effect to such Construction Balancing Cash Transfer. For the avoidance of doubt, Construction Balancing Cash shall not be included in Available Project Funds hereunder.

6.14 Disbursement Agent, Collateral Agent, Administrative Agent Not Responsible . Notwithstanding anything to the contrary contained in this Agreement, other than

receiving certificates provided for herein, neither the Collateral Agent, the Administrative Agent nor the Disbursement Agent shall have any obligations or responsibilities with respect to Sections 6.1 through 6.13.

7. Events of Default. Upon the occurrence of any of the following specified events (each, an "**Event of Default**"):

(a) the occurrence and continuation of an "Event of Default" under the Loan Agreement or any other Loan Document;

(b) the failure, from time to time, of the Project to be In Balance, which failure shall continue for thirty (30) consecutive days without being cured;

(c) any representation, warranty or certification made by the Borrower or any other Loan Party in this Agreement, any Disbursement Request or any other certificate submitted pursuant hereto shall be found to have been incorrect in any material respect when made or deemed to be made; *provided, however*, that if a representation and warranty contains a materiality or Material Adverse Effect qualification, the materiality qualifier in this Section 7(c) shall be disregarded for purposes of such representation and warranty;

(d) [Intentionally Deleted];

(e) the Borrower shall fail to perform or observe any of its obligations hereunder (other than those listed in clauses (a), (b) or (c) above) where such Default shall not have been remedied within thirty (30) days after the earlier of (i) the Borrower or any other Loan Party becoming aware of such breach or Default, or (ii) notice of such failure from the Disbursement Agent, the Collateral Agent, or the Administrative Agent to the Borrower;

(f) the Borrower or any other Loan Party shall breach or default under any material term, condition, provision, covenant, representation or warranty contained in any Key Contract and such breach or default shall continue unremedied for fifteen (15) days after the earlier of (i) the Borrower or any other Loan Party becoming aware thereof; or (ii) receipt by the Borrower or any other Loan Party of notice thereof from the Disbursement Agent, the Collateral Agent or the Administrative Agent; *provided, however*, that so long as (x) such breach or default could not reasonably be expected to result in a Material Adverse Effect; and (y) such breach or default is reasonably susceptible to cure within a further forty-five (45) days but cannot be cured within such original fifteen (15) day period despite the Borrower's good faith and diligent efforts to do so, then the cure period shall be extended as is reasonably necessary beyond such original fifteen (15) day period (but such extension shall in no event be longer than forty-five (45) additional days) if remedial action reasonably likely to result in cure is promptly instituted within such original fifteen (15) day period and is continued until the breach or default is remedied;

(g) any party (other than the Borrower or any other Loan Party) shall breach or default under any material term, condition, provision, covenant, representation or

warranty contained in any Key Contract and such breach or default shall continue unremedied for thirty (30) days after the earlier of (i) the Borrower or any other Loan Party becoming aware thereof, or (ii) receipt by the Borrower or any other Loan Party of notice thereof from the Collateral Agent, the Administrative Agent or the Disbursement Agent; *provided, however,* that:

(A) if such breach or default is reasonably susceptible to cure within seventy-five (75) days but cannot be cured within such original thirty (30) days despite such other party's good faith and diligent efforts to do so, the cure period shall be extended as is reasonably necessary beyond such original thirty (30) day period (but shall in no event be longer than seventy-five (75) days and only if remedial action reasonably likely to result in cure is promptly instituted within such original thirty (30) day period and is thereafter diligently pursued until the breach or default is remedied; and

(B) no Event of Default shall be deemed to have occurred as a result of such breach or default if the Borrower provides written notice to the Collateral Agent, the Administrative Agent and the Disbursement Agent promptly upon (but in no event more than two (2) Business Days after) the Borrower or any other Loan Party becoming aware thereof that the Borrower intends to replace such Key Contract (or that replacement is not necessary); and

(1) the Borrower obtains a replacement obligor or obligors reasonably acceptable to the Administrative Agent (in consultation with the Construction Consultant) for the affected party (if in the reasonable judgment of the Disbursement Agent or the Administrative Agent (in consultation with the Construction Consultant) a replacement is necessary);

(2) the Borrower enters into a replacement Key Contract in accordance with Section 6.3 on terms no less beneficial to the Borrower and the Secured Parties in any material respect than the Key Contract so breached (or otherwise reasonably satisfactory to the Disbursement Agent and the Administrative Agent) within seventy-five (75) days of such breach (if in the reasonable judgment of the Administrative Agent (in consultation with the Construction Consultant) a replacement is necessary and the applicable counterparty has not theretofore cured its breach); *provided, further, however,* that the replacement Key Contract may require the Borrower to pay amounts to the replacement obligor in excess of those that would otherwise have been payable under the breached Key Contract if such additional payments in the reasonable judgment of the Administrative Agent, in consultation with the Construction Consultant, do not cause the Project to fail to be In Balance; and

(3) such breach or default, after considering any replacement obligor and replacement Key Contract and the time required to implement such replacement, has not had and could not reasonably be expected to have a Material Adverse Effect;

(h) any of the Key Contracts shall have terminated, become invalid or illegal, or otherwise ceased to be in full force and effect (other than in the ordinary course at the end of its stated term); *provided, however,* that no Event of Default shall be deemed to have occurred as a result of such termination, invalidity, illegality or cessation if the Borrower provides written notice to the Collateral Agent, the Administrative Agent and the Disbursement Agent promptly upon (but in no event more than two (2) Business Days after) the Borrower or any other Loan Party becoming aware of such Key Contract terminating, becoming invalid or illegal, or otherwise ceasing to be in full force or effect that the Borrower intends to replace such Key Contract (or that replacement is not necessary) and:

(A) the Borrower obtains a replacement obligor or obligors reasonably acceptable to the Administrative Agent, for the affected party (if in the reasonable judgment of the Administrative Agent, in consultation with the Construction Consultant, a replacement is necessary);

(B) the Borrower enters into a replacement Key Contract in accordance with Section 6.3, on terms no less beneficial to the Borrower and the Secured Parties in any material respect than the Key Contract so terminated, invalidated, deemed illegal or ceased (or otherwise as reasonably satisfactory to the Disbursement Agent and the Administrative Agent), within sixty (60) days of such termination, invalidity, illegality or cessation (if in the reasonable judgment of the Administrative Agent, in consultation with the Construction Consultant, a replacement is necessary); *provided, however*, that the replacement Key Contract may require the Borrower to pay additional amounts to the replacement obligor that would have otherwise been payable under the terminated Key Contract if such additional payments in the reasonable judgment of the Administrative Agent, in consultation with the Construction Consultant, do not cause the Project to fail to be In Balance; and

(C) such termination, invalidity, illegality or cessation, after considering any replacement obligor and replacement Key Contract and the time required to implement such replacement, has not had and could not reasonably be expected to have a Material Adverse Effect;

and during the continuance of an Event of Default, the Collateral Agent, the Administrative Agent or the Disbursement Agent may, without further notice of default, presentment or demand for payment, protest or notice of non-payment or dishonor, or other notices or demands of any kind, all such notices and demands being waived (to the extent permitted by applicable law), exercise any or all rights and remedies at law or in equity (in any combination or order that such Persons may elect, subject to the foregoing), including without limitation or prejudice to such Person's other

rights and remedies, (x) subject to the terms and provisions of Section 3.2, refuse, and such Persons shall not be obligated, to make or cause to be made any Disbursements or make or cause to be made any payments from any Account or other funds (whether or not held by the Disbursement Agent by or on behalf of the Borrower), and (y) exercise any and all rights and remedies available under any of the Loan Documents.

8. Coordination with Building Loan Disbursement Agreement. Notwithstanding anything to the contrary herein, there shall be no substitution or replacement of the Construction Consultant, the Disbursement Agent and/or any Account Bank hereunder unless there shall have also been a simultaneous and corresponding substitution or replacement of the Construction Consultant, the Disbursement Agent and/or Account Bank under the Building Loan Disbursement Agreement, as the case may be, it being understood that (i) if the Disbursement Agent resigns or is removed as the Disbursement Agent pursuant to Section 11 of the Building Loan Disbursement Agreement, then the Disbursement Agent shall concurrently resign or be removed, as the case may be, as the Disbursement Agent under this Agreement, and the successor Disbursement Agent under the Building Loan Disbursement Agreement shall concurrently become the Disbursement Agent under this Agreement, in each case, without any further act or approval by any Person (*i.e.,* the same Person shall always act as the Disbursement Agent under this Agreement and under the Building Loan Disbursement Agreement and, if any Person has the right to remove the Disbursement Agent under this Agreement or the Building Loan Disbursement Agreement, such Person shall have the right to remove the Disbursement Agent concurrently under the other agreement) and (ii) the provisions of this Agreement are intended to coordinate with the provisions of the Building Loan Disbursement Agreement with regard to the development of the Project, the administration of the Accounts and the "Accounts" as defined in the Building Loan Disbursement Agreement and the administration and processing of Disbursement Requests and "Disbursement Requests" as defined in the Building Loan Disbursement Agreement.

9. Termination. This Agreement shall terminate upon the earlier of (a) "payment in full" of all Obligations in accordance with the terms of the Loan Agreement; and (b) the closing of (x) all Accounts in accordance with Section 4.3 and (y) all "Accounts" (under and as defined in the Building Loan Disbursement Agreement); *provided, however*, that the obligations of the Borrower under Section 9 of the Building Loan Disbursement Agreement (made applicable hereto pursuant to the terms of Section 1.3 above) shall survive termination of this Agreement. For the avoidance of doubt, upon the termination of this Agreement as set forth above, the Accounts shall no longer be required to be subject to a Control Agreement.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties hereto have each caused this Project Disbursement Agreement to be duly executed by their duly authorized officers, all as of the day and year first above written.

CREDIT SUISSE AG, CAYMAN ISLANDS BRANCH,
as the Disbursement Agent

By: /s/ Robert Hetu
Name: Robert Hetu
Title: Authorized Signatory

By: /s/ Whitney Gaston
Name: Whitney Gaston
Title: Authorized Signatory

CREDIT SUISSE AG, CAYMAN ISLANDS BRANCH,
as the Administrative Agent

By: /s/ Robert Hetu
Name: Robert Hetu
Title: Authorized Signatory

By: /s/ Whitney Gaston
Name: Whitney Gaston
Title: Authorized Signatory

CREDIT SUISSE AG, CAYMAN ISLANDS BRANCH,
as the Collateral Agent

By:	/s/ Robert Hetu
Name:	Robert Hetu
Title:	Authorized Signatory

By:	/s/ Whitney Gaston
Name:	Whitney Gaston
Title:	Authorized Signatory

MONTREIGN OPERATING COMPANY, LLC,
as the Borrower

By: /s/ Joseph A. D'Amato
Name: Joseph A. D'Amato
Title: President

EMPIRE RESORTS REAL ESTATE II, LLC,
as the EV Subsidiary

By: /s/ Joseph A. D'Amato
Name: Joseph A. D'Amato
Title: President

EXHIBIT 10.51

Execution Version

BUILDING LOAN DISBURSEMENT AGREEMENT

among

CREDIT SUISSE AG, CAYMAN ISLANDS BRANCH,
as the Disbursement Agent

and

CREDIT SUISSE AG, CAYMAN ISLANDS BRANCH,
as the Administrative Agent

and

CREDIT SUISSE AG, CAYMAN ISLANDS BRANCH,
as the Collateral Agent

and

MONTREIGN OPERATING COMPANY, LLC,
as the Borrower

and

EMPIRE RESORTS REAL ESTATE II, LLC

as the EV Subsidiary

Dated as of January 24, 2017

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BUILDING LOAN DISBURSEMENT AGREEMENT

This **BUILDING LOAN DISBURSEMENT AGREEMENT** (as amended, supplemented, restated or otherwise modified from time to time, this "**Agreement**") is dated as of January 24, 2017 by and among **CREDIT SUISSE AG, CAYMAN ISLANDS BRANCH,** solely in its capacity as disbursement agent hereunder (together with its successors and assigns from time to time in such capacity, the "**Disbursement Agent**"), **CREDIT SUISSE AG, CAYMAN ISLANDS BRANCH,** solely in its capacity as administrative agent under the Loan Agreement (as defined below) (together with its successors and assigns from time to time in such capacity, the "**Administrative Agent**"), **CREDIT SUISSE AG, CAYMAN ISLANDS BRANCH,** solely in its capacity as collateral agent under the Loan Agreement (together with its successors and assigns from time to time in such capacity, the "**Collateral Agent**"), **MONTREIGN OPERATING COMPANY, LLC**, a New York limited liability company (the "**Borrower**"), and **EMPIRE RESORTS REAL ESTATE II, LLC,** a New York limited liability company (the "**EV Subsidiary,**" and collectively with the Borrower, jointly and severally, the "**Company**").

RECITALS

A. **Project**. The Company is developing a project commonly known as the "Montreign Resort Casino," comprised of a casino (including a banquet and event center), hotel entertainment village, parking structure and various food and beverage facilities, including restaurants and related facilities and amenities, to be located in the Town of Thompson, Sullivan County, New York (the "**Project**").

B. **Building Loan Facility**. Concurrently herewith, the Lenders (as defined below) under that certain Building Term Loan Agreement (as amended, supplemented, restated or otherwise modified from time to time, the "**Loan Agreement**"), dated as of the date hereof, by and among the Borrower, the Administrative Agent and the financial institutions from time to time party thereto in the capacity of lenders (collectively, the "**Lenders**") are providing commitments to extend certain credit facilities (the "**Facilities**") to the Borrower as set forth therein.

C. **Equity Contributions**. Certain equity contributions shall have been made to the Borrower on and prior to the Closing Date (as defined in the Loan Agreement), which amounts shall be or have been applied toward Building Loan Costs (as defined below).

D. **Purpose**. The parties have entered into this Agreement in order to set forth (i) the conditions upon which, and the manner in which, funds will be deposited into and disbursed from the Accounts (as defined below) to pay Building Loan Costs, including Debt Financing Costs (as defined below), and certain other costs and expenses of the Company, and (ii) certain representations, warranties and covenants of the Borrower.

E. **Subsidiary Guarantees**. The obligations of the Borrower hereunder are guaranteed by the Subsidiary Guarantors.

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Definitions and Rules of Interpretation.

1.1 Definitions. The terms identified below in this Section 1 shall have the meanings herein specified, and capitalized terms used but not otherwise identified in this Section 1 shall have the meanings given in the Loan Agreement (unless otherwise stated herein).

"**Account Bank**" means (a) with respect to the Holding Accounts, the Holding Account Bank, and (b) with respect to the Disbursement Accounts, the Local Bank.

"**Accounts**" means, collectively, the Holding Accounts and the Disbursement Accounts.

"**Additional Construction Contract Certificate**" has the meaning given in Section 6.3.2(a).

"**Administrative Agent**" has the meaning given in the preamble.

"**Agreement**" has the meaning given in the preamble.

"**Allocated BLDA EV Equity**" has the meaning given in the Project Disbursement Agreement.

"**Anticipated EV Equity**" has the meaning given in the Project Disbursement Agreement.

"**Anticipated Investment Income**" means, at any time, with respect to the Building Loan Company Funds Account and the Building Loan Proceeds Account, the amount of investment income which the Borrower reasonably estimates will accrue on the funds in each such Account through the Scheduled Completion Date, taking into account the current and future anticipated rates of return on investments in each such Account permitted under the Loan Documents, the anticipated times and amounts of deposits to each such Account and draws from each such Account for the payment of Building Loan Costs and the nature and tenor of the investments in which such funds are permitted to be invested.

"**Anticipated Loan Interest Reserve Investment Income**" means, at any time with respect to the Building Loan Interest Reserve Account (and taking into account all BLIRA Interest Income Transfers), the amount of investment income which the Borrower reasonably estimates will accrue on the funds in such Account through the Interest Reserve Date, taking into account the current and future anticipated rates of return on investments in such Account permitted under the Loan Documents, the anticipated times and amounts of deposits to such Account and draws from such Account for the payment of Debt Financing Costs and the nature and tenor of the investments in which such funds are permitted to be invested.

"**Applicable Permits**" means all Permits of any Governmental Authority that are, at the relevant time, required or that are otherwise necessary for the performance of the design or construction of the Project or the operation or maintenance of the Project, including environmental, construction, operating or occupancy permits and any agreements, consents or approvals of any Governmental Authority that are, at the relevant time, required or that are otherwise necessary for the performance of the design or construction of the Project or the operation or maintenance of the Project. Without limiting the foregoing, Applicable Permits also includes permits for temporary construction utilities and temporary sanitary facilities, dump permits, road use permits, permits related to the use, storage and disposal of Hazardous Materials introduced to the Project site for or in connection with the performance of the design or construction of the Project or the operation or maintenance of the Project, and permits issued pursuant to any building, mechanical, electrical, plumbing or similar codes in connection with the performance of the design or construction of the Project or the operation or maintenance of the Project.

"**Architect**" means JCJ Architecture, PC, together with its successors and assigns permitted under the Architectural Services Agreement.

"**Architectural Services Agreement**" means that certain Standard Form of Agreement, dated as of February 2, 2012, between the Borrower and the Architect.

"**Available Construction Funds**" means, on any date of determination, the sum of (a) the amounts then on deposit in the Building Loan Company Funds Account, the Building Loan Proceeds Account, and the Disbursement Accounts, collectively; plus (b) the Anticipated Investment Income at such time; plus (c) the aggregate amount of the outstanding unfunded Available Term A Loan Commitments; plus (d) Cash Collateral Postings (to the extent the applicable financial institution, bonding company or surety has not, on such date of determination, provided the Borrower with written notice of its intent to exercise against such Cash Collateral Posting); plus (e) amounts in respect of Contingency Transfers, Project Budget Realized Savings and/or Allocated BLDA EV Equity designated for the payment of Building Loan Costs pursuant to a Building Budget amendment hereunder and a corresponding Project Budget amendment under the Project Disbursement Agreement (and deducted from Available Project Funds under the Project Disbursement Agreement); plus (f) the BLDA Share at such time; plus (g) the BLDA Bond Amount Share at such time; plus (h) the amount of Construction Balancing Cash at such time.

"**Available Gaming Commission Bond Amount**" has the meaning given in the Project Disbursement Agreement.

"**Available Term A Loan Commitment** " means the Term A Loan Commitment (as defined in the Loan Agreement) minus the Golf Course Loan Amount (as defined in the Loan Agreement).

"**Borrower**" has the meaning given in the preamble.

"**BLDA Bond Amount Share**" means a designated amount, in Dollars, of the Available Gaming Commission Bond Amount that has been identified by Borrower in each Building Loan Cost Schedule delivered hereunder (as the same may have been modified pursuant to Section 6.11 of the Project Disbursement Agreement), and which, when added to the then-applicable PDA Bond

Amount Share, shall exactly equal the then-remaining Available Gaming Commission Bond Amount at such time.

"**BLDA Share**" means a designated amount, in Dollars, of the then-remaining Anticipated EV Equity (as defined in the Project Disbursement Agreement) that has been identified by Borrower in each Building Loan Cost Schedule delivered hereunder, and which, when added to the then-applicable PDA Share, shall exactly equal the then-remaining Anticipated EV Equity at such time.

"**BLIRA Interest Income Transfer**" has the meaning given in Section 2.2.1(d).

"**Building Budget Amendment Certificate**" has the meaning given in Section 6.1.3.

"**Building Loan Cash Management Account**" means the Building Loan Cash Management Account, which shall be established by Borrower with the Local Bank, designated as such pursuant to Section 2.2.3 or opened as a replacement account therefor in accordance with Section 12.17, subject to a Control Agreement, and subjected to perfected liens to secure the Obligations.

"**Building Loan Company Funds Account**" means the Building Loan Company Funds Account, which shall be an account established by Borrower with the Holding Account Bank, designated as such pursuant to Section 2.2.1 or opened as a replacement account therefor in accordance with Section 12.17, subject to a Control Agreement, and subjected to perfected liens to secure the Obligations.

"**Building Loan Costs**" means the costs described in the Building Budget (including Debt Financing Costs), which costs constitute Costs of Improvement. For the avoidance of doubt, Building Loan Costs hereunder shall not include or be duplicative of Project Costs (as defined in the Project Disbursement Agreement), and shall be as reflected in the Line Items hereunder and in the Building Budget.

"**Building Loan Cost Schedule**" means an itemized schedule of Building Loan Costs substantially in the form attached as Schedule 1 to Exhibit B, as updated from time to time in accordance with this Agreement.

"**Building Loan Cost Schedule Certificate**" has the meaning given in Section 6.5.

"**Building Loan Disbursement Account**" means the Building Loan Disbursement Account, which shall be an account established by Borrower with the Local Bank, designated as such pursuant to Section 2.2.2 or opened as a replacement account therefor in accordance with Section 12.17, subject to a Control Agreement, and subjected to perfected liens to secure the Obligations.

"**Building Loan Interest Reserve Account**" means the Building Loan Interest Reserve Account, which shall be an account established by Borrower with the Holding Account Bank, designated as such pursuant to Section 2.2.1 or opened as a replacement account therefor in accordance with Section 12.17, subject to a Control Agreement, and subjected to perfected liens to secure the Obligations.

"**Building Loan Proceeds Account**" means the Building Loan Proceeds Account, which shall be an account established by Borrower with the Holding Account Bank, designated as such pursuant to Section 2.2.1 or opened as a replacement account therefor in accordance with Section 12.17, subject to a Control Agreement, and subjected to perfected liens to secure the Obligations.

"**Cash Collateral Posting**" means the delivery of cash or cash equivalents by the Borrower to financial institutions, bonding companies or other sureties to support or secure the issuance by such entities of letters of credit, bonds or other instruments securing performance to any contractor or other third party in furtherance of the construction and completion of the Project; *provided, however*, that (a) the costs which such letters of credit, bonds or other instruments securing performance are issued to support or secure are Building Loan Costs incurred or to be incurred in accordance with the Building Budget; and (b) at no time shall the aggregate amount of Cash Collateral Postings then outstanding (excluding Cash Collateral Postings supporting the bonding of Permitted Mechanics' Liens) exceed $2,000,000.

"**Cash Management Allowance**" means, with regard to the Building Loan Cash Management Account at any time, Five Million Dollars ($5,000,000) in the aggregate.

"**Casino**" means that portion of the Project comprising the casino and having the facilities set forth in clauses (a) through (d) of the definition of "Minimum Facilities" hereunder.

"**Casino Opening Date**" means the first date on which each of the following has occurred:

(a) all Applicable Permits required for the operation of the Casino with the Minimum Facilities in all material respects (including Gaming Licenses) have been issued and are in full force and effect;

(b) (i) the Borrower has delivered an Officer's Certificate to the Disbursement Agent and the Administrative Agent (with a copy to the Construction Consultant), substantially in the form of Exhibit E-1; and (ii) the Construction Consultant has delivered a certificate to the Disbursement Agent and the Administrative Agent, substantially in the form attached as Exhibit 1 to Exhibit E-1;

(c) the Casino with the Minimum Facilities is substantially complete in all material respects in accordance with the Final Plans and Specifications;

(d) the Casino is in a condition (including installation of furnishings, fixtures and equipment) to receive customers in the ordinary course of business;

(e) the Casino is open to the public and is operating with the Minimum Facilities;

(f) the Casino is operating in accordance with applicable law in all material respects;

(g) a permanent or temporary certificate of occupancy with respect to each building, facility or venue comprising the Casino with the Minimum Facilities

requiring such certificate has been issued by the appropriate Governmental Authority;

(h) all conditions to the opening of the Casino required under the Ground Lease and Master Development Agreement shall have been satisfied;

(i) all conditions to the opening of the Casino required under the Gaming License Conditions shall have been satisfied; and

(j) the Designated Opening Percentage of the Hotel is substantially complete and ready for occupancy in accordance with the Final Plans and Specifications.

"**Casino Opening Deadline**" means March 1, 2018, as the same may be extended pursuant to Section 6.15.

"**Collateral Agent**" has the meaning given in the preamble.

"**Company**" has the meaning given in the preamble.

"**Completion**" means that each of the following conditions has been satisfied:

(a) The Borrower shall have delivered to the Disbursement Agent (with a copy to the Construction Consultant):

(i) an Officer's Certificate substantially in the form of Exhibit E-2 certifying that:

(A) the Casino Opening Date and Hotel Opening Date has occurred, and the Project with the Minimum Facilities (including with regard to the Entertainment Village) is substantially complete in all material respects in accordance with the Final Plans and Specifications, and the Project has been operating uninterrupted for at least seven (7) consecutive days prior to the date of certification;

(B) all amounts required to be paid to Contractors in connection with causing the Project to achieve the Completion Date have been paid, other than:

(X) Permitted Amounts, so long as (1) one hundred percent (100%) of such Punchlist Completion Amount for such uncompleted Punchlist Items shall have been reserved in the Building Loan Proceeds Account or the Building Loan Company Funds Account; (2) the aggregate amount of such Disputed Amounts with respect to all Construction Contracts shall have been reserved in the Building Loan Proceeds Account and/or the Building Loan Company Funds Account (or shall have otherwise been utilized for Cash Collateral Postings in respect of such Disputed Amounts); and (3)

such Retainage Amounts shall have been reserved in the aggregate in the Building Loan Proceeds Account and/or the Building Loan Company Funds Account (such reserved amount, collectively with the reserved amounts described in clauses (1) and (2) above, the "**Reserved Amounts**"); and

(Y) Excess Permitted Amounts, so long as such amounts have been reserved for, insured over or bonded over to the reasonable satisfaction of the Administrative Agent with Excess Reserved Amounts.

(C) the Borrower has satisfied the Lien Waiver Deliverables Requirement;

(D) there are no mechanic's liens or other liens, charges or orders filed against the Project or any portion thereof by any Contractor or any other party that have not been discharged of record, other than with respect to Permitted Amounts for which Reserved Amounts have been reserved as set forth in clause (B) above, or that have otherwise been reserved for, insured over or bonded over to the reasonable satisfaction of the Administrative Agent;

(E) all furnishings, fixtures and equipment necessary to use and occupy the various portions of the Project for their intended uses shall have been installed and shall be operational;

(F) the Borrower shall have available a staff to operate the Project in accordance with Legal Requirements and industry standards; and

(G) there has occurred satisfaction or substantial completion of all matters represented by "Line Items" as defined in and under the Project Disbursement Agreement, other than with regard to "Permitted Amounts," as defined in and under the Project Disbursement Agreement.

(ii) a certificate of the Construction Consultant, substantially in the form of Exhibit 2 to Exhibit E-2, certifying as to the matters set forth therein; and

(iii) an Update Endorsement to the Lenders' Title Policy from the Title Company.

(b) A list of any remaining Punchlist Items, including the estimated cost of completing the same, shall have been agreed to between the Borrower and the Contractors and shall have been delivered to the Construction Consultant, the Administrative Agent and the Disbursement Agent by the Borrower, and shall have

been approved by the Construction Consultant as a reasonable final punchlist (such approval not to be unreasonably withheld, conditioned or delayed); and

(c) The Construction Manager and EV Contractor shall have delivered to the Borrower and the Construction Consultant a certificate or notice of "Substantial Completion" of the work under the Construction Management Agreement and EV Construction Contract, respectively; and such certificate or notice shall have been accepted by the Borrower and by the Construction Consultant in accordance herewith (such acceptance not to be unreasonably withheld, conditioned or delayed), and a copy of such certificate and acceptance shall have been delivered to the Disbursement Agent and the Administrative Agent.

"**Completion Date**" shall mean the date on which Completion occurs.

"**Consent**" has the meaning given in Section 6.3.2(c).

"**Construction Balancing Cash**" has the meaning given in the Project Disbursement Agreement.

"**Construction Contract Amendment**" means any amendment or modification of, or a waiver of a right or obligation under, a Construction Contract to which a Loan Party is a party, or under any payment or performance bond provided thereunder (including any change order or other owner construction change directive to such Contractor or under such Construction Contract).

"**Construction Contract Amendment Certificate**" has the meaning given in Section 6.2(b).

"**Construction Contracts**" means the contracts (including the Key Construction and Design Contracts), to which one or more of the Loan Parties or the Construction Manager are a party, pertaining to the design or construction of the Project or the supply of materials, fixtures, equipment or services in connection with the design, construction or installation of the Project to the extent the costs thereof are included in the Building Budget (and excluding any contracts for materials, equipment, services or other Project Costs included in the Project Budget under the Project Disbursement Agreement).

"**Construction Management Agreement**" means that certain Standard Form of Agreement Between Owner and Construction Manager as Constructor (AIA Document A133-2009, including AIA Document A201-2007), dated as of April 26, 2013 between Monticello Raceway Management, Inc. ("MRMI") as "Owner" and LPCiminelli, Inc. as "Construction Manager", as amended by that certain Guaranteed Maximum Price Amendment executed by Construction Manager on June 11, 2013 and MRMI on July 8, 2013; that certain Letter Agreement dated December 17, 2014 between MRMI and Construction Manager; that certain Assignment and Assumption Agreement dated as of October 27, 2015, between MRMI and Borrower; that certain Guaranteed Maximum Price Amendment dated October 28, 2015 executed by Construction Manager on October 29, 2015 and by Borrower on February 8, 2016; and that certain Agreement dated February 8, 2016 by and betweenn Borrower and Construction Manager.

"**Construction Manager**" means (i) LPCiminelli, Inc., a Delaware corporation, together with its successors and permitted assigns under the Construction Management Agreement; or (ii) another Person reasonably acceptable to the Administrative Agent in consultation with the Construction Consultant, together with its successors and permitted assigns, that will act as the general contractor on the Project.

"**Contingency Transfer**" has the meaning given in Section 6.1.4 of the Project Disbursement Agreement.

"**Contractor**" means a contractor, subcontractor, architect, engineer or supplier of materials, fixtures, equipment or services engaged by a Loan Party, the Construction Manager or the EV Contractor in connection with the construction of the Project pursuant to a Construction Contract, including the Construction Manager, Architect, EV Contractor, EV Architect and each other contractor, architect, engineer or supplier that is party to a Construction Contract.

"**Contractor Subject to Retainage**" means (a) each subcontractor of the Construction Manager and EV Contractor performing work relating to Hard Costs, (b) each Contractor (other than the Construction Manager) performing work under a Construction Contract entered into after the Closing Date which involves the supply and installation of materials, (c) the Construction Manager with respect to the "general conditions" items under the Construction Management Agreement, and (d) the EV Contractor with respect to any "general conditions" items under the EV Construction Contract.

"**Costs of Improvement**" shall mean those expenditures defined as a "cost of improvement" under Section 2 of the Lien Law (the term "improvement" also defined therein).

"**Debt Financing Costs**" means all payment of interest, premium (if any), and other amounts payable by the Borrower to Lenders, the Administrative Agent, the Disbursement Agent, the Collateral Agent or any other Secured Party from time to time under the Loan Documents (including any commitment fees or agency fees thereunder), after giving effect to any interest rate hedging agreements, but only to the extent the same constitute Costs of Improvement.

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

"**Designated Opening Percentage**" means, as of the Casino Opening Date, substantial completion and opening to the public of fifteen (15) VIP pool deck "keys" at the Hotel, and fifty percent (50%) of all other "keys" at the Hotel.

"**Disbursement**" means a transfer of funds from the Building Loan Company Funds Account or the Building Loan Proceeds Account to a Disbursement Account (or, to the extent provided hereunder and in accordance with Section 4.2, directly to pay Building Loan Costs). For the avoidance of doubt, a Cash Collateral Posting shall not constitute a "Disbursement" hereunder.

"**Disbursement Account**" means each of the Building Loan Disbursement Account, the Building Loan Cash Management Account, and any other accounts or sub-accounts established from time to time with respect thereto pursuant to the terms of the applicable Control Agreements.

"**Disbursement Agent**" has the meaning given in the preamble.

"**Disbursement Agent Responsible Officer**" means those persons who from time to time are employed in the corporate banking department within the investment bank of Disbursement Agent.

"**Disbursement Request**" has the meaning given in Section 4.1.1(a).

"**Disputed Amounts**" means invoices for work, services or materials which are being disputed in good faith by the Borrower under the applicable Construction Contracts, *provided, however*, that (a) such disputes are not reasonably likely to result in the sale, forfeiture or loss of the Project, any material portion thereof or any material Collateral, title thereto or any interest therein and shall not interfere in any material respect with the construction or operation of the Project; (b) the aggregate amount of Disputed Amounts identified by all Contractors in any lien release, affidavits or agreements, together with (but without duplication) the aggregate amount payable with respect to Disputed Amounts under all Construction Contracts for which the Borrower has not delivered an unconditional lien release, affidavit and agreement from the relevant Contractor, plus all other Remaining Costs with respect to all Line Items in the Building Budget (other than with regard to the "**Debt Financing Cost**" Line Item to the extent of payments which are to be made from the Building Loan Interest Reserve Account pursuant to Section 4.3 of the Disbursement Agreement) does not exceed the Available Construction Funds; and (c) sufficient funds remain available under the applicable Line Item and in the "**Building Contingency**" Line Item in the Building Budget to pay such disputed amount in full should the Borrower be obligated to make such payment under the terms of the applicable Construction Contract. For the avoidance of doubt, Disputed Amounts shall not be duplicative of the Punchlist Completion Amount or Retainage Amounts.

"**Empire**" means Empire Resorts, Inc., a Delaware corporation.

"**Entertainment Village**" means that certain multi-story non-gaming hotel complex with dining, entertainment and retail offerings having a gross building floor area in a six-story configuration of approximately 103,022 gross square feet, connected to the Casino and Hotel by an enclosed walkway.

"**EV Architect's Agreement**" means an architectural services agreement, in form and substance reasonably satisfactory to Administrative Agent and the Construction Consultant, between the EV Subsidiary and an architect reasonably satisfactory to Administrative Agent (such architect, the "**EV Architect**") and pertaining to the Entertainment Village.

"**EV Construction Contract**" means a guaranteed maximum price Construction Contract between the EV Subsidiary and a contractor reasonably satisfactory to Administrative Agent (such contractor, the "**EV Contractor**") pertaining to the design and construction of the Entertainment

Village and the supply of materials, fixtures and equipment pertaining thereto, all in form and substance reasonably satisfactory to Administrative Agent and the Construction Consultant.

"**EV Contracts**" means, collectively, the EV Construction Contract and the EV Architect's Agreement.

"**Event of Default**" has the meaning given in Section 7.

"**EV Subsidiary**" has the meaning given in the preamble.

"**Excess Permitted Amounts**" means, at Completion, such amounts in respect of Punchlist Completion Amounts, Disputed Amounts and/or Retainage Amounts, that, in each case, exceed the respective amounts allowable therefor in the definition of "Permitted Amounts" hereunder.

"**Excess Reserved Amounts**" means amounts equal to Excess Permitted Amounts that have been reserved for, insured over or bonded over to the reasonable satisfaction of the Administrative Agent with the proceeds of additional Cash equity contributed by Borrower at Completion into the Building Loan Company Funds Account.

"**Exhausted**" means (a) with respect to the Building Loan Proceeds Account, the time at no funds remain in the Building Loan Proceeds Account and the Available Term A Loan Commitments have been fully drawn or terminated; and (b) with respect to the Building Loan Company Funds Account and/or the Building Loan Interest Reserve Account, the time at which no funds remain on deposit therein.

"**Extension Days**" means the number of days the Scheduled Casino Opening Date and/or the Casino Opening Deadline are extended beyond March 1, 2018 pursuant to Section 6.15 hereof.

"**Facilities**" has the meaning given in the recitals.

"**Final Completion**" means each of the following conditions has been satisfied:

(a) The Completion Date shall have occurred;

(b) The Borrower shall have delivered to the Disbursement Agent an Officer's Certificate substantially in the form of Exhibit E-3 certifying that: (i) all amounts required to be paid to Contractors have been paid (including all amounts required to be paid to Contractors in respect of Permitted Amounts; (ii) the Borrower has satisfied the Lien Waiver Deliverables Requirement; and (iii) there are no mechanic's liens or other liens, charges or orders filed against the Project or any portion thereof by any Contractor or any other party that have not been discharged of record, reserved for, insured over or bonded over to the reasonable satisfaction of the Administrative Agent.

(c) The Construction Manager and the Construction Consultant shall have delivered to the Disbursement Agent a certificate substantially in the form of Exhibits 1 and 2, respectively, to Exhibit E-3, and a certificate substantially similar to such Exhibit 1 shall have been delivered by the EV Contractor;

(d) The Title Company shall have delivered to the Collateral Agent, the Disbursement Agent and the Construction Consultant an endorsement to the Lenders' Title Policy in the form attached hereto as Exhibit L or in such other form as may be reasonably acceptable to the Disbursement Agent, dated as of the Final Completion Date, which endorsement shall either:

(X) (i) insure that there are no intervening Liens which may then or thereafter take priority over the Lien of the Mortgage *other than* (A) as set forth in the applicable form of endorsement specified above, or (B) with respect to Senior Permitted Liens (other than mechanic's liens or other liens, charges or orders filed against the Project by any Contractor or other party related to the provision of materials or services constituting Building Loan Costs);

(ii) delete any and all mechanic's lien exceptions contained in such Lenders' Title Policy;

(iii) except as set forth in clause (i) above, not add any additional exclusions or exceptions to the coverage provided by the Lenders' Title Policy, other than Permitted Liens that are subordinate to the Lien of the Mortgage; and

(iv) bring the date of the Lenders' Title Policy forward to the date of Final Completion; or

(Y) otherwise be in form and substance reasonably acceptable to the Disbursement Agent, the Collateral Agent and the Administrative Agent;

(e) The Collateral Agent, the Administrative Agent, the Construction Consultant and the Disbursement Agent shall have received "as-built" Plans and Specifications showing the final specifications of all improvements to which such Plans and Specifications apply and which comprise the Project;

(f) The Collateral Agent, the Administrative Agent, the Construction Consultant and the Disbursement Agent shall have received copies of all material warranty documentation, together with all guaranties and maintenance agreements, in each case, provided to or for the benefit of the Borrower pursuant to a Construction Contract in respect of the improvements comprising the Project;

(g) The Collateral Agent, the Administrative Agent, the Construction Consultant and the Disbursement Agent shall have received satisfactory evidence demonstrating continued compliance with the insurance requirements under Section 5.05 and Exhibit K of the Loan Agreement; and

(h) There has occurred final completion of all matters represented by "Line Items" as defined in the Project Disbursement Agreement, including payment of all amounts required to be paid in respect of "Permitted Amounts" (as defined in the Project Disbursement Agreement), as certified by the Borrower.

"**Final Completion Date**" means the date on which Final Completion occurs.

"**Final Plans and Specifications**" means, with respect to any particular work or improvement that constitutes a portion of the Project, the Plans and Specifications for such work or improvement to the extent such Plans and Specifications:

(a) have received all approvals from any Governmental Authority required to approve such Plans and Specifications that are necessary to commence (or continue) construction of such work or improvements, if any;

(b) contain sufficient specificity to permit the completion of such work or improvement described therein;

(c) are consistent with constructing the Project to include the Minimum Facilities;

(d) with respect to the architectural drawings, shall have been signed by the Architect, and with respect to the engineering drawings, shall have been signed by the applicable engineer; and

(e) support construction of the Project in a manner consistent with the Completion Date occurring on or prior to the Scheduled Completion Date and the Casino Opening Date occurring on or prior to the Scheduled Casino Opening Date;

provided, however, that the Final Plans and Specifications may be modified from time to time in accordance with the terms hereof, including Section 6.6.

"**Final Plans and Specifications Amendment Certificate**" means an Officer's Certificate from the Borrower substantially in the form attached hereto as Exhibit G, together with certificates of the Construction Manager, the Construction Consultant and the Architect, substantially in the form attached as Exhibits 1, 2 and 3 of Exhibit G thereto (and, if applicable a certificate substantially similar to such Exhibits 1 and 3 shall be delivered by the EV Contractor and EV Architect, respectively).

"**Force Majeure Event**" means any event or condition that causes a delay in the construction of the Project (but only to the extent that such event is outside the Borrower's reasonable control, could not have been overcome through the exercise of reasonable care and diligence by the Borrower, was not caused by the Borrower's negligence, and the Borrower has used reasonable efforts to mitigate the impact of the delay), including the following: (a) an act of God (such as tornado, flood, hurricane, snow, ice, etc.); (b) fires or other casualties; (c) strikes, lockouts or other labor disturbances (except to the extent taking place at the Project site only); (d) war (declared or

undeclared), civil war, epidemics, riots, insurrections or civil commotions; (e) acts of sabotage or terrorism; (f) the requirements of law, statutes and regulations enacted after the Closing Date; (g) Governmental Action issued or occurring after the Closing Date or delay by any Governmental Authority in issuing Applicable Permits after timely submission of required documents and payment of fees therefor; or (h) embargoes, shortages or unavailability of materials, supplies, labor, equipment and systems that first arise after the Closing Date but only to the extent caused by another act, event or condition listed in clauses (a) through (g) above.

"**Governmental Action**" means any resolution, ordinance, statute, regulation, order, judgment or decision of a Governmental Authority, regardless of how constituted, having the force of law.

"**Hard Costs**" means Building Loan Costs incurred in accordance with the Building Budget under the "**Construction Management Agreement**" Line Item or with regard to the EV Construction Contract under the "**EV Construction Contract**" Line Item, as the case may be.

"**Holding Account**" means each of the Building Loan Proceeds Account, the Building Loan Company Funds Account, the Building Loan Interest Reserve Account, and any other accounts or sub-accounts established from time to time with respect thereto pursuant to the terms of the applicable Control Agreements, each of which accounts shall bear interest.

"**Holding Account Bank**" means, as of the Closing Date, M&T Bank and/or Wilmington Trust, National Association (or any replacement bank substituted therefor pursuant to the provisions of Section 12.17).

"**Hotel**" means that portion of the Project comprising the hotel and having the facilities set forth in clause (e) of the definition of "Minimum Facilities" hereunder.

"**Hotel Opening Date**" means the first date on which each of the following has occurred:

(a) all Applicable Permits required for the operation of the Hotel with the Minimum Facilities in all material respects have been issued and are in full force and effect;

(b) the Hotel with the Minimum Facilities is substantially complete in all material respects in accordance with the Final Plans and Specifications;

(c) the Hotel is in a condition (including installation of furnishings, fixtures and equipment) to receive customers in the ordinary course of business;

(d) the Hotel is open to the public and is operating with the Minimum Facilities;

(e) the Hotel is operating in accordance with applicable law in all material respects; and

(f) a permanent or temporary certificate of occupancy with respect to each building, facility or venue comprising the Hotel with the Minimum Facilities

requiring such certificate has been issued by the appropriate Governmental Authority; and

(g) all conditions to the opening of the Hotel required under the Ground Lease and Master Development Agreement shall have been satisfied.

"**In Balance**" means, at any time of determination thereof and both before and after giving effect to any requested Disbursement, that (a) the Available Construction Funds are no less than the sum of the total Remaining Costs, (b) at all times prior to the Interest Reserve Date, the funds in the Building Loan Interest Reserve Account (after giving effect to any Anticipated Loan Interest Reserve Investment Income) are sufficient to pay the Debt Financing Costs set forth in Section 4.3 on the outstanding amount of Loans under the Loan Agreement anticipated to accrue through the Interest Reserve Date; and (c) the Project is "In Balance" as defined in and under the Project Disbursement Agreement.

"**Interest Payment Date**" means any date on which interest on the Loans is due to be paid under the Loan Agreement.

"**Interest Reserve Contingency Transfer**" means Contingency Transfers utilizing amounts in respect of the **"Project Contingency"** Line Item under the Project Disbursement Agreement for purposes of satisfying clause (b) of the definition of "In Balance" hereunder in connection with an extension of the Scheduled Casino Opening Date and the Casino Opening Deadline pursuant to Section 6.15 hereof.

"**Interest Reserve Contingency Transfer Limit**" means Interest Reserve Contingency Transfers in the maximum amount of $1,000,000 *minus* the aggregate amount of funds then utilized from the "**Building Contingency**" Line Item hereunder (if any) and the "**Project Contingency**" Line Item under the Project Disbursement Agreement for the purposes of funding Scope Changes pursuant to Section 6.1.1.

"**Interest Reserve Date**" means the date that is five hundred twenty-five (525) days after the Closing Date; *provided, however,* that in the event that the Borrower extends the Scheduled Casino Opening Date and/or the Casino Opening Deadline beyond March 1, 2018 in accordance with Section 6.15, then the Interest Reserve Date shall be extended by the number of Extension Days.

"**Indemnitees**" has the meaning given in Section 9(a).

"**Key Construction and Design Contract**" means the Construction Management Agreement, the Architectural Services Agreement, the EV Contracts, and each other Construction Contract with an individual contract amount in excess of $4,000,000 each of which is set forth on Exhibit J (as such Exhibit may be updated pursuant to the terms of this Agreement).

"**Lenders**" has the meaning given in the recitals.

"**Lenders' Title Policy**" means the title insurance policy (including all endorsements thereto) issued as of the Closing Date by the Title Company to the Collateral Agent for the benefit of the Secured Parties, as the same may be further endorsed or modified pursuant to the terms hereof from time to time following the Closing Date.

"**Lien Law**" means the Lien Law of the State of New York as in effect from time to time.

"**Lien Waiver Deliverables Requirement**" means the delivery by the Borrower to the Administrative Agent, the Disbursement Agent and the Construction Consultant of unconditional lien waivers or releases, affidavits and agreements (or, in the case of Final Completion, the delivery of final unconditional lien waivers or final releases, affidavits and agreements) from each Contractor substantially in the form of Exhibit I (with immaterial modifications thereto as may be reasonably requested by a Contractor) or another form reasonably acceptable to the Administrative Agent in consultation with the Construction Consultant, with regard to all payments made to date to such Contractor (*other than* (i) from any Contractor with a contract price (or the expected aggregate amount to be paid, in the case of "cost plus" contracts) of less than $100,000 individually; (ii) for the period prior to Completion, with respect to Permitted Mechanics' Liens, Disputed Amounts and Retainage Amounts; and (iii) for the period on and after Completion and prior to Final Completion, with respect to Permitted Amounts); *provided* that, with respect to scheduled rent payments under the "**Ground Lease Rent**" Line Item that are reflected in the Building Budget, the Borrower shall in no event be required to provide any documentary evidence of payment thereof other than evidence of the wire transfer to the ground lessor thereunder of such rent payment.

"**Line Item**" means each of the following individual line items set forth in the Building Budget (as in effect from time to time), and any additional line item that may be added pursuant to Section 6.1(a):

(a) Construction Management Agreement;

(b) Architect and EV Architect Fees;

(c) Building Contingency (if any);

(d) EV Construction Contract;

(e) Debt Financing Costs; and

(f) Ground Lease Rent.

"**Loan Agreement**" has the meaning given in the recitals.

"**Loan Repayment Funds**" has the meaning given in Section 4.5.1.

"**Local Bank**" means, as of the Closing Date, M&T Bank (or any replacement bank substituted therefor pursuant to the provisions of Section 12.17).

"**Material Construction Contract Amendment**" has the meaning given in Section 6.2.

"**Minimum Facilities**" means, with respect to the Project:

(a) a casino facility with an approximately 90,000 square foot gaming floor, with 2,150 gaming machines and 102 table games, or such lower number of gaming machines (but not less than 2,000) and/or table games (but not less than 92) as the Gaming Authorities shall have approved under the Gaming License Conditions;

(b) 1,595 parking spaces in a multi-level parking structure;

(c) a 27,000 square foot convention, banquet and event center;

(d) 7 food and beverage outlets (inclusive of outlets constituting a food court and 3 full service food and beverage establishments), or such lower number of such outlets (but not less than 6) as the Gaming Authorities shall have approved under the Gaming License Conditions;

(e) a hotel with 316 rooms, including 27 VIP rooms (comprised of 7 villas and 8 garden suites located on the floor where VIP gaming is to occur, adjacent to the pool deck, and 12 penthouse rooms) and a VIP gaming lounge; and

(f) a multi-story entertainment village including a hotel with 100 rooms, 3 retail establishments, 1 dining establishment and a parking lot for 250 parking spaces.

provided, however, that (x) when used in connection with the Casino Opening Date, the Scheduled Casino Opening Date and/or the Casino Opening Deadline, "Minimum Facilities" with regard to the Casino shall mean those facilities described in clauses (a) through (d) above, and (y) when used in connection with the Completion Date, the Scheduled Completion Date and the Completion Deadline, the "Minimum Facilities" with regard to the Casino shall mean those facilities described in clauses (a) through (d) above, with regard to the Hotel shall mean those facilities described in clause (e) above, and with regard to the Entertainment Village shall mean those facilities described in clause (f) above.

"**Officer's Certificate**" means, for any Person, a certificate of such Person signed by one officer of such Person (or two officers of such Person, if required by the governing documents of such Person to be binding), who must be the principal executive officer, the principal financial officer, the treasurer or the principal accounting officer of such Person.

"**Outside Completion Deadline**" means January 1, 2019.

"**PC**" means the percentage of the Project substantially completed as of the applicable calculation date, based upon the Hard Costs incurred as of such date in accordance with the Building Budget as compared to the total amount set forth for such Hard Costs in the Building Budget.

"**PDA Bond Amount Share**" has the meaning given in the Project Disbursement Agreement.

"**PDA Share**" means a designated amount, in Dollars, of the then-remaining Anticipated EV Equity (as defined in the Project Disbursement Agreement) that has been identified by Borrower in each Project Cost Schedule delivered under the Project Disbursement Agreement, and which,

when added to the BLDA Share, shall exactly equal the then-remaining Anticipated EV Equity at such time.

"**Permitted Amounts**" means, without duplication, and taking into account any amounts for the same under the Project Disbursement Agreement (a) Punchlist Completion Amounts with an aggregate value less than $4,500,000; (b) Disputed Amounts with an aggregate value less than $6,000,000; and (c) Retainage Amounts with an aggregate value less than $10,000,000; in each case, as certified by the Borrower, the Construction Manager and the EV Contractor and reasonably confirmed by the Construction Consultant and in each case for which there are Reserved Amounts.

"**Permitted Mechanics' Liens**" means those Permitted Liens described in Section 6.02(c) of the Loan Agreement related to the provision of materials or services constituting Building Loan Costs not evidencing aggregate overdue obligations in excess of Twenty Million Dollars ($20,000,000) (such amount, the "**PML Threshold**") and that have been reserved for, insured over or bonded over to the reasonable satisfaction of the Administrative Agent and, for any amount in excess of the PML Threshold, that have been fully reserved for with additional Cash equity contributed by Borrower into the Building Loan Company Funds Account.

"**Plans and Specifications**" means all drawings, plans and specifications prepared by or on behalf of the Borrower as of the Closing Date, as the same may be amended or supplemented from time to time in accordance with this Agreement, and, if required, submitted to and approved by the appropriate Governmental Authorities, which describe and show the Project and the labor and materials necessary for the construction thereof, and which Plans and Specifications shall have been approved by the Administrative Agent in consultation with the Architect and the Construction Consultant to the extent such approval is required by Section 6.6.

"Project" has the meaning given in the recitals.

"**Project Budget Realized Savings**" means "Realized Savings" (under and as defined in the Project Disbursement Agreement) from a "Line Item" (under and as defined in the Project Disbursement Agreement).

"**Project Documents**" means the Construction Contracts, the payment and performance bonds issued thereunder and each other agreement entered into by any Loan Party on or prior to the Closing Date relating to the development, construction or design of the Project (other than the Loan Documents).

"**Project Disbursement Agreement**" means that certain Project Disbursement Agreement dated as of the date hereof, by and among the Borrower, the EV Subsidiary, the Administrative Agent, the Disbursement Agent, and the Collateral Agent.

"Project Schedule" means the Project Schedule attached hereto as Exhibit M, as amended from time to time in accordance with this Agreement.

"**Punchlist Completion Amount**" means, from time to time from and after the Completion Date, the estimated cost to complete all remaining Punchlist Items (as certified by the Borrower

and reasonably confirmed by the Construction Consultant, with respect to each Disbursement from and after the Completion Date in their respective certificates substantially in the form of Exhibit E-2 and Exhibit 1 to Exhibit E-2). For the avoidance of doubt, the Punchlist Completion Amount shall not be duplicative of Disputed Amounts or Retainage Amounts.

"**Punchlist Items**" means minor or insubstantial details of construction or mechanical adjustment, the non-completion of which, when all such items are taken together, will not interfere in any material respect with the use or occupancy of the Project for its intended purposes or the ability of the owner or lessee, as applicable, of any portion of the Project (or any tenant thereof) to perform work that is necessary or desirable to prepare such portion of the Project for such use or occupancy; *provided, however*, that in all events, "Punchlist Items" shall include (to the extent not already completed) the items set forth in the punchlist to be delivered by the Construction Manager in connection with achieving "Substantial Completion" pursuant to the Construction Management Agreement and by the EV Contractor in connection with achieving "Substantial Completion" pursuant to the EV Construction Contract, and all items that must be completed as a condition to the issuance of a permanent certificate of occupancy for the Project.

"**Realized Savings**" means, as of any date, with respect to any Line Item in the Building Budget, the excess of (i) the Remaining Budgeted Amount for such Line Item over (ii) the Remaining Costs with respect to such Line Item; *provided, however,* that Realized Savings for any Line Item shall be deemed to be zero unless and until the Borrower has delivered an executed Building Budget Amendment Certificate (together with all exhibits thereto) which includes such Realized Savings and such certificate has been approved by the Construction Consultant (which approval shall not be unreasonably withheld, delayed or conditioned) and, to the extent required under Section 6.1, the Administrative Agent (which approval shall not be unreasonably withheld or delayed); *provided, further, however*, that no Realized Savings shall be obtainable with respect to the "**Building Contingency**" Line Item or the "**Debt Financing Costs**" Line Item under the Building Budget; *provided still further, however,* that the Realized Savings for any Line Item pertaining to amounts payable pursuant to a guaranteed maximum price contract (including the Construction Management Agreement and the EV Construction Contract) shall be deemed to be zero, unless (subject to the provisions of Section 6.2 hereof, if applicable) such guaranteed maximum price contract has been amended to reduce the guaranteed maximum price thereunder or the Construction Manager (or EV Contractor, as the case may be) certifies in writing to the Administrative Agent that realized savings have been achieved with respect to a portion of the work, which savings result in a reduction of the guaranteed maximum price and shall be shared with the Borrower (or the EV Subsidiary, as the case may be) as required by the terms of such guaranteed maximum price contract, in which case the Realized Savings shall be the amount of the reduction in the guaranteed maximum price which reduces the Borrower's (or EV Subsidiary's) obligations.

"**Remaining Budgeted Amount**" for any Line Item on the Building Budget means the Total Budgeted Amount for such Line Item in the Building Budget less the amount previously spent with respect to such Line Item.

"**Remaining Costs**" means, at any time and with respect to any Line Item in the Building Budget, the amount of funds reasonably expected to be expended by the Borrower after the date of

determination (taking into account, among other things, work completed to date and Scope Changes entered into in accordance herewith) to complete the tasks set forth in such Line Item and for the materials and services used to complete such tasks that remain unpaid at such time through Final Completion, including, for the avoidance of doubt, Punchlist Items, Retainage Amounts and the full amount of any claims for payments by Contractors that are being disputed by the Borrower, as certified at any such time by the Borrower and confirmed by the Construction Consultant (such confirmation not to be unreasonably withheld, delayed or conditioned). Notwithstanding the foregoing, the term "Remaining Costs" shall not include those Debt Financing Costs for which payments are to be made from the Building Loan Interest Reserve Account pursuant to Section 4.3 or Project Costs pursuant to (and as defined in) the Project Disbursement Agreement. The amount of Remaining Costs shall not be reduced by the amount of any outstanding Cash Collateral Posting.

"**Remaining Funds**" has the meaning given in Section 4.5.2.

"**Reserved Amounts**" has the meaning given in clause (B) of the definition of "**Completion**".

"**Retainage Amounts**" means, at any given time, amounts that would otherwise have accrued and be owing under the terms of a Construction Contract for work, materials or services already provided but which at such time (in accordance with the terms of the Construction Contract or applicable law) are being withheld from payment to the Contractor thereunder on account of defective or incomplete work or until certain subsequent events (*e.g.*, Contractor's remedying of such failure or Contractor's achievement of a designated construction milestone or completion benchmark) have been achieved. For the avoidance of doubt, Retainage Amounts shall not be duplicative of Disputed Amounts or the Punchlist Completion Amount.

"**Scheduled Casino Opening Date**" means March 1, 2018, as the same may from time to time be extended pursuant to Section 6.15.

"**Scheduled Completion Date**" means September 1, 2018, as the same may from time to time be extended pursuant to Section 6.15.

"**Scope Change**" means any change in the Plans and Specifications (or the Final Plans and Specifications, as the case may be), or any other change to the design, layout, architecture or quality of the Project from that which is contemplated on the Closing Date, except to the extent such change is required by Legal Requirements occurring after the Closing Date or an immaterial deviation from the reasonable and inferable intent of the Key Construction and Design Contracts and the then-current Plans and Specifications (or Final Plans and Specifications, as the case may be).

"**Scope Change Limit**" means $1,000,000 *minus* the aggregate amount of Interest Reserve Contingency Transfers.

"**Section 22 Lien Law Affidavit**" means a true statement under oath verified by the Borrower as required by Section 22 of the Lien Law and otherwise in form and substance reasonably

acceptable to Administrative Agent. A copy of the Section 22 Lien Law Affidavit as in effect as of the Closing Date is attached hereto as Exhibit N.

"**Soft Costs**" means all Building Loan Costs other than Hard Costs.

"**Total Budgeted Amount**" with respect to any Line Item in the Building Budget at any given time means the total amount budgeted for such Line Item in the Building Budget (whether or not such amount has been expended) at such time in accordance with this Agreement.

"Trigger" has the meaning given in Section 3.2.

"**Trigger Notice**" has the meaning given in Section 3.2.

"**Unincorporated Materials**" has the meaning given in Section 4.1.2(d).

"**Update Endorsement**" has the meaning given in Section 4.1.2(c)(i).

1.2 Rules of Interpretation. Headings in this Agreement are for convenience only and shall not be considered or referred to in resolving questions of interpretation of this Agreement. The singular includes the plural, and the plural includes the singular. The word "or" is not exclusive. Except as otherwise defined, accounting terms have the meanings assigned to them by GAAP, as applied by the accounting entity to which they refer. The words "include," "includes" and "including" shall be deemed to be followed by "without limitation". A reference in a document to an Article, Section, Exhibit, Schedule, Annex or Appendix is to the Article, Section, Exhibit, Schedule, Annex or Appendix of such document unless otherwise indicated. Exhibits, Schedules, Annexes or Appendices to any document shall be deemed incorporated by reference in such document. In the event of any conflict between the provisions of this Agreement (exclusive of the Exhibits, Schedules, Annexes and Appendices thereto) and any Exhibit, Schedule, Annex or Appendix hereto, the provisions of this Agreement shall control. References to any document, instrument or agreement (x) shall include all exhibits, schedules and other attachments thereto, (y) shall include all documents, instruments or agreements issued or executed in replacement thereof, and (z) shall mean such document, instrument or agreement, or replacement or predecessor thereto, as amended, restated, modified and supplemented from time to time and in effect at any given time, to the extent such amendment, restatement, modification or supplement is made in accordance with the terms of this Agreement and the other Loan Documents, as the case may be. The words "hereof," "herein" and "hereunder" and words of similar import when used in any document shall refer to such document as a whole and not to any particular provision of such document unless the context demands otherwise. References to "days" shall mean calendar days, unless the term "Business Days" shall be used, except that any deadline to perform an obligation that falls on a day other than a Business Day shall be deemed extended until the next succeeding Business Day, other than the payment by any Loan Party of Debt Financing Costs, which shall be payable on the preceding Business Day. References to a time of day shall mean such time in New York, New York, unless otherwise specified.

1.3 Joint and Several Liability. The obligations of the Borrower and the EV Subsidiary hereunder shall be joint and several.

2. Appointment of Disbursement Agent; Establishment of Accounts; Related Provisions.

2.1 Appointment of the Disbursement Agent. The Disbursement Agent is hereby appointed by the Company, the Collateral Agent, and the Administrative Agent as disbursement agent hereunder, and the Disbursement Agent hereby agrees to act as such and to instruct the applicable Account Bank to deposit into, or disburse from, the applicable Accounts all cash, payments and other amounts to be deposited into any applicable Account or to be disbursed from any applicable Account pursuant to the terms of this Agreement.

2.2 Establishment of Accounts.

2.2.1 ***Establishment of Holding Accounts***.

(a) Concurrently with the execution and delivery of this Agreement, the Borrower shall enter into a Control Agreement, pursuant to which the Holding Account Bank, as the account bank thereunder, shall establish and maintain, among other accounts, the Holding Accounts. The Borrower shall cause such Accounts to be maintained at all times until such Accounts are permitted to be closed in accordance with Section 4.6.

(b) On the Closing Date, there shall be deposited into the Building Loan Proceeds Account and the Building Loan Company Funds Account such amounts, as shall have been designated in that certain funds flow memorandum delivered under the Loan Agreement in connection with the Closing Date, and upon the funding of any Term A Loans (other than proceeds funded into the Golf Course Loan Account, as defined in the Loan Agreement), the proceeds of such funding shall be deposited into Building Loan Proceeds Account.

(c) On the Closing Date, there shall be deposited into the Building Loan Interest Reserve Account such amounts as shall have been designated in that certain funds flow memorandum delivered under the Loan Agreement in connection with the Closing Date. After the Closing Date, there shall be deposited into the Building Loan Interest Reserve Account such amounts as are necessary to satisfy the then-applicable Specified Interest Reserve Account Amount pursuant to Section 2.01(b) of the Loan Agreement.

(d) Except as specifically provided herein or in the Loan Agreement until termination of this Agreement, the Borrower shall deposit into the Building Loan Company Funds Account:

(1) until the Casino Opening Date all of its and the other Loan Parties' cash inflows necessary for the Project to be In Balance, and property insurance, condemnation proceeds and liquidated damages received from Contractors, in each case (i) net of any commercially reasonable costs and expenses in obtaining such amounts and taxes related thereto, and (ii) excluding any amounts which are applied towards repayment of the Loans in accordance with the terms of the Loan Agreement; and

(2) all amounts funded for the account of the Borrower by the Completion Guarantor in respect of Building Loan Costs pursuant to the Completion Guaranty at the times and on the terms contemplated by such Completion Guaranty (in each case, other than such amounts as have been deposited into the "Project Company Funds Account" as defined in and pursuant to the terms of the Project Disbursement Agreement); *provided, however,* that the Borrower may deliver all or any portion of any delay in startup or business interruption insurance proceeds into the Building Loan Interest Reserve Account, so long as the remainder of such proceeds are deposited into the Building Loan Company Funds Account;

(e) Investment income or interest received from amounts on deposit in the Holding Accounts shall be deposited into the applicable Holding Account; *provided, however,* that investment income or interest received from amounts on deposit in the Building Loan Interest Reserve Account may, from time to time, be transferred (a "BLIRA Interest Income Transfer") to the Building Loan Proceeds Account, the Building Loan Company Funds Account or the Project Company Funds Account (as defined in the Project Disbursement Agreement) for the payment of Building Loan Costs hereunder (or Project Costs under and as defined in the Project Disbursement Agreement, as the case may be), *provided* that the Borrower has provided the Disbursement Agent with a written request for such transfer accompanied with a certification that (a) no Default or Event of Default has occurred and is continuing (or will result from such transfer), and (b) the Project will be In Balance (as defined herein and in the Project Disbursement Agreement) before and after giving effect to such transfer.

2.2.2 ***Establishment of Building Loan Disbursement Account***. Concurrently with the execution and delivery of this Agreement, the Borrower shall enter into a Control Agreement with the Local Bank, as the account bank thereunder, with respect to the Building Loan Disbursement Account. The Borrower shall cause such Account to be maintained at all times until such Account is permitted to be closed in accordance with Section 4.6. On the Closing Date, there shall be deposited into the Building Loan Disbursement Account such amounts, if any, as shall have been designated in that certain funds flow memorandum delivered under the Loan Agreement in connection with the Closing Date. Subject to such Control Agreement, and except for any amounts which may be deposited therein on the Closing Date (which amounts shall be permitted to be applied to the Building Loan Costs for which such amounts were so deposited), the Borrower shall be permitted from time to time to draw checks on and otherwise withdraw amounts on deposit in the Building Loan Disbursement Account to pay Building Loan Costs then due and payable and reflected in the applicable Disbursement Request pursuant to which such amounts were transferred to the Building Loan Disbursement Account. The Borrower shall cause investment income or interest received from amounts on deposit in the Building Loan Disbursement Account to be deposited therein.

2.2.3 ***Establishment of Building Loan Cash Management Account***. Concurrently with the execution and delivery of this Agreement, the Borrower shall enter into a Control Agreement with the Local Bank, as the account bank thereunder, with respect to the Building

Loan Cash Management Account. On the Closing Date, there shall be deposited into the Building Loan Cash Management Account such amounts, if any, as shall have been designated in that certain funds flow memorandum delivered under the Loan Agreement in connection with the Closing Date. The Borrower shall be permitted from time to time after the Closing Date to request a Disbursement of funds from the Building Loan Proceeds Account or Building Loan Company Funds Account, as the case may be, to the Building Loan Cash Management Account (including to replace amounts previously drawn from, and/or to increase the funds on deposit in, the Building Loan Cash Management Account) by including a request to such effect in a Disbursement Request and satisfying the conditions precedent set forth in Section 4.1.2; *provided, however,* that the balance of funds on deposit in the Building Loan Cash Management Account may not exceed the Cash Management Allowance at any time and, in connection with any Disbursement Request, the Borrower shall certify to the Disbursement Agent that the aggregate balance of funds on deposit in the Building Loan Cash Management Account does not and will not exceed the Cash Management Allowance (including after giving effect to any such Disbursement Request). Subject to such Control Agreement, the Borrower shall be permitted from time to time to draw checks on and otherwise withdraw amounts on deposit in the Building Loan Cash Management Account to pay Building Loan Costs then due and payable. The Borrower shall cause investment income or interest received from amounts on deposit in the Building Loan Cash Management Account to be deposited therein until applied to the payment of Building Loan Costs as described above.

2.3 Acknowledgment of Security Interest; Control. In order to secure the Obligations, the Borrower has pledged to the Collateral Agent, and created in favor of the Collateral Agent for the benefit of the Administrative Agent and the Lenders, a security interest in and to, the Accounts, all Cash, Cash Equivalents, financial assets, investment property, instruments, investments, securities entitlements and other securities or amounts at any time on deposit in or credited to the Accounts, and all proceeds of any of the foregoing. All moneys, Cash Equivalents, financial assets, investment property, instruments, investments, securities entitlements and other securities at any time on deposit in or credited to any of the Accounts shall constitute collateral security for the payment and performance of the Obligations and shall at all times be subject to the control of the Collateral Agent (for the benefit of the Administrative Agent and the Lenders), and shall be held in the custody of the securities intermediary or account bank under the applicable Control Agreement for the purposes of, and on the terms set forth in, such Control Agreement.

2.4 The Borrower's Rights. The Borrower shall not have any rights or powers with respect to any amounts in any Accounts, or any part thereof, except (a) as provided in the applicable Control Agreements and (b) the right described in the Loan Documents to have such amounts applied in accordance with the provisions hereof and the Loan Documents. Furthermore, for purposes of clarification, in no event shall any Holding Accounts (or amounts distributed from the Holding Accounts for the payment of Debt Financing Costs or other Building Loan Costs or otherwise) be held, maintained, received or otherwise controlled by the Borrower.

3. Certain Responsibilities of the Disbursement Agent.

3.1 Instructions for Disbursements from Certain Holding Accounts. Except for the payments described in Section 3.3 and subject to Sections 3.5 and 4.1.3, the Disbursement Agent

shall, in accordance with a Disbursement Request, instruct the Account Bank (pursuant to the provisions of the applicable Control Agreement) to disburse funds from the Building Loan Proceeds Account, or the Building Loan Company Funds Account, as the case may be, to pay for Building Loan Costs in accordance with the Borrower's Disbursement Requests after approval thereof in accordance with the terms hereof and only upon satisfaction (or waiver by the Administrative Agent) of the conditions to disbursement set forth herein. For the avoidance of doubt, instructions from the Disbursement Agent for the payment of amounts described in Section 3.3 shall be given regardless of whether the conditions precedent to disbursement have been satisfied or waived and regardless of whether an Event of Default has occurred or is continuing.

3.2 Transfer of Funds at Direction of the Administrative Agent. Subject to Sections 3.3, 3.5 and 4.1.3, but notwithstanding any other provision to the contrary in this Agreement (but subject to the last sentence of this Section 3.2), from and after the date the Disbursement Agent receives written notice from the Borrower, the Collateral Agent, or the Administrative Agent that an Event of Default exists, and until such time, if ever, as the Disbursement Agent receives written notice from the Collateral Agent or the Administrative Agent that such Event of Default no longer exists, the Disbursement Agent shall not instruct the Account Banks to disburse any funds from the Accounts (other than disbursements from the Building Loan Interest Reserve Account to pay Debt Financing Costs), and any withdrawal or transfer of amounts from such Accounts shall be made at the direction of the Administrative Agent; *provided, however*, that (i) any wires funded from or checks drawn on either Disbursement Account or the Building Loan Interest Reserve Account for payments approved hereunder in connection with a prior Disbursement Request shall be honored to the extent of available funds on deposit therein notwithstanding the continuance of any such Event of Default; and (ii) Disbursement Requests submitted by the Borrower hereunder solely for payments of (1) insurance premiums on insurance policies required for the Project under the Loan Documents to the extent the same constitute Building Loan Costs, (2) Taxes assessed against the Project to the extent the same constitute Building Loan Costs, or (3) other payments to Governmental Authorities to the extent the same constitute Building Loan Costs, shall be honored to the extent of Disbursements necessary for payment of such amounts notwithstanding the continuance of any such Event of Default, unless and until the Administrative Agent shall have notified the Disbursement Agent that such Disbursements are not to be made or the Collateral Agent shall have issued a Trigger Notice (as defined below); *provided further, however,* that in the event the Administrative Agent determines in its sole discretion that an Event of Default would be cured upon the making of the subject Disbursement, the Administrative Agent shall so notify the Disbursement Agent and the Disbursement Agent shall, so long as all other conditions precedent to the subject Disbursement have been satisfied, instruct the Account Banks to disburse the funds requested by the subject Disbursement. Such Disbursement may be made, at the request of the Administrative Agent, directly to the payee(s) thereof. The parties hereto expressly acknowledge and agree that in the event that the Collateral Agent shall have issued a prohibition notice, notice of sole control or other similar direction (a "**Trigger Notice**") to any Account Bank under a Control Agreement to the effect that such Account Bank shall only act at the direction of the Collateral Agent with regard to the Accounts thereunder (such event, a "**Trigger**"), then during the occurrence and continuation of the Event of Default giving rise to such Trigger, no further direction by the Disbursement Agent shall be given with regard to any Account hereunder. Upon delivery, if ever, of written notice

rescinding such Trigger Notice by the Collateral Agent to the Disbursement Agent, disbursement of funds shall occur in accordance with the terms of this Agreement.

3.3 Payment of Compensation.

3.3.1 ***Compensation of the Disbursement Agent, the Administrative Agent and the Construction Consultant***. On each anniversary of the Closing Date (or on the first Business Day after such anniversary if such anniversary does not fall on a Business Day), the Disbursement Agent shall instruct the Account Bank under the applicable Control Agreement to transfer the fees and any other amounts scheduled to be paid under the Fee Letters from the applicable Account (as determined pursuant to Section 4.2) directly to Credit Suisse AG, Cayman Islands Branch and CBRE, Inc., a Delaware corporation, d/b/a Inspection & Valuation International (or its respective successors or assigns), as applicable, which amount shall constitute compensation for services to be performed by it in its respective capacities as the Disbursement Agent, the Administrative Agent and the Construction Consultant during such year.

3.3.2 ***Power of Attorney***. The instructions contemplated by this Section 3.3 to be given by the Disbursement Agent shall be made without the requirement of obtaining any further consent or action on the part of the Borrower with respect thereto, and the Borrower hereby constitutes and appoints the Disbursement Agent its true and lawful attorney-in-fact to give such instructions and, if applicable, make such disbursements, and this power of attorney shall be deemed to be a power coupled with an interest and shall be irrevocable.

3.4 Periodic Review.

3.4.1 ***Review by Disbursement Agent***. The Disbursement Agent shall act in good faith in the performance of its duties hereunder. Commencing upon execution and delivery hereof, the Disbursement Agent shall have the right, but shall have no obligation, to meet periodically at reasonable times upon reasonable advance notice with representatives of each of the Administrative Agent, the Borrower, the Architect, the Construction Manager, the EV Contractor, the EV Architect, the Construction Consultant and such other employees, consultants, counsel or agents as the Disbursement Agent shall reasonably request to be present for such meetings. In addition, the Disbursement Agent shall have the right, but shall have no obligation, at reasonable times during customary business hours and at reasonable intervals upon prior notice, to review, to the extent it deems reasonably necessary or appropriate to permit it to perform its duties hereunder, all information (including Construction Contracts) supporting any Disbursement Request and any certificates in support of any of the foregoing. The Disbursement Agent shall be entitled, but shall have no obligation, to examine, copy and make extracts of the books, records, accounting data and other documents of the Borrower or the other Loan Parties which are reasonably necessary or appropriate to permit it to perform its duties hereunder, including bills of sale, statements, receipts, contracts or agreements to the extent related to any materials, fixtures or articles incorporated into the Project (excluding each of the foregoing which is subject to attorney-client privilege or attorney-work product). The rights of the Disbursement Agent under this Section 3.4 shall not (a) extend any review or response periods granted to the Agents or the Construction Consultant under this Agreement, provided that Borrower or the other Loan Parties are reasonably cooperating to provide Disbursement Agent with the requested information; or (b) be construed as an obligation, it being

understood that the Disbursement Agent's duty is solely limited to act upon certificates and Disbursement Requests submitted by the Borrower and instructions of the Collateral Agent and/or the Administrative Agent, as applicable, pursuant to the terms hereof (and, in the case of Section 3.4.2, invoices submitted by the Construction Consultant), and the Disbursement Agent shall be protected in acting upon any Disbursement Request which appears to be valid on its face and to be duly executed by an authorized representative of the Borrower.

3.4.2 ***Review by Construction Consultant***. The Borrower shall permit the Construction Consultant (acting as a representative for the Administrative Agent, the Collateral Agent and the Disbursement Agent) to meet periodically at reasonable times during customary business hours and at reasonable intervals with representatives of the Borrower, the Disbursement Agent, the Construction Manager, the EV Contractor, the Architect, the EV Architect and such other employees, consultants, counsel or agents as the Administrative Agent, the Collateral Agent or the Construction Consultant shall reasonably request to be present for such meetings (it being understood that the parties intend, so far as reasonably practicable, to coordinate such meetings to coincide with any schedule of regular meetings established between the Borrower and the Construction Manager or EV Contractor, as the case may be). Construction Consultant shall (i) participate in such meetings, at reasonable times during customary business hours and at reasonable intervals, with the Borrower, the Construction Manager, the EV Contractor, the Architect, the EV Architect and/or other employees, consultants, counsel or agents of the Borrower as the Borrower may from time to time reasonably request and (ii) upon the Borrower's request, review and provide comments to "pencil copy requisitions" in advance of the Borrower's submission of Disbursement Requests. Subject to safety-related requirements, the Borrower shall permit the Construction Consultant (and in the case of clause (c), the Insurance Advisor) (a) to perform such inspections of the Real Property and the Project as it deems reasonably necessary or appropriate in the performance of its duties on behalf of the Administrative Agent, the Collateral Agent and the Disbursement Agent, (b) at reasonable times during customary business hours upon reasonable prior notice to review, to the extent it deems reasonably necessary or appropriate to permit it to perform its duties, to review and examine the Plans and Specifications (and Final Plans and Specifications) and all shop drawings relating to the Project, and all information (including Construction Contracts) supporting the amendments to the Building Budget, amendments to any Construction Contracts, any Disbursement Request and any certificates in support of any of the foregoing, to inspect materials stored at any Mortgaged Property, the Project, or off-site facilities where materials designated for use in the Project are stored, and (c) to review the insurance required pursuant to the terms of the Loan Documents. The Borrower hereby authorizes the Administrative Agent, the Collateral Agent, the Disbursement Agent and the Construction Consultant to contact the Construction Manager, the EV Contractor, the Architect or the EV Architect, and after the occurrence and during the continuation of an Event of Default, any other payee for purposes of confirming receipt of progress payments; *provided, however,* that that the Administrative Agent, the Collateral Agent and the Disbursement Agent shall have no obligation to contact (or cause the Construction Consultant to contact) any payee to so confirm. In addition, the Administrative Agent, the Collateral Agent and the Disbursement Agent (or the Construction Consultant on their behalf) shall be entitled to (at such Person's sole cost and expense, except after the occurrence and during the continuation of an Event of Default, whereupon such costs and expenses shall be for the account of Borrower) examine, copy and make extracts of the books, records, accounting data and other documents of the Borrower or

the other Loan Parties relating to the construction of the Project, including bills of sale, statements, receipts, lien releases and affidavits, contracts or agreements, to the extent related to any materials, fixtures or articles incorporated into the Project (excluding each of the foregoing which is subject to attorney-client privilege or attorney-work product. Upon the occurrence and during the continuation of an Event of Default, at the request of the Administrative Agent, the Collateral Agent, the Disbursement Agent or the Construction Consultant, the Borrower shall from time to time deliver to the Administrative Agent, the Collateral Agent, the Disbursement Agent and the Construction Consultant a Building Loan Cost Schedule for the Project. Subject to safety-related requirements, the Borrower agrees to reasonably cooperate, and shall cause the other Loan Parties, the Construction Manager, the EV Contractor and each other Contractor to reasonably cooperate, with the Construction Consultant in assisting the Construction Consultant to perform its duties on behalf of the Administrative Agent, the Collateral Agent and the Disbursement Agent and exercising its review and inspection rights hereunder to take such further steps as the Administrative Agent, the Collateral Agent, the Disbursement Agent or the Construction Consultant reasonably may request in order to facilitate the performance of such obligations or the exercise of such rights.

3.5 Special Procedures for Unpaid Contractors. If an Event of Default has occurred and is continuing, the Borrower agrees that the Disbursement Agent may, but shall not be obligated to, make or cause to be made advances and transfers of any or all sums in the Accounts (other than the Building Loan Interest Reserve Account) directly into the account of any Contractor for amounts due and owing to such Contractor from the Borrower without further authorization from the Borrower and the Borrower hereby constitutes and appoints the Disbursement Agent as its true and lawful attorney-in-fact to make or cause the making of such direct payments and this power of attorney shall be deemed to be a power coupled with an interest and shall be irrevocable; *provided, however,* that the Disbursement Agent shall not exercise its rights under this power of attorney except as directed in writing by the Collateral Agent or the Administrative Agent. No further direction or authorization from the Borrower shall be necessary to warrant or permit the Disbursement Agent to make or cause the making of such advances in accordance with the foregoing. The Disbursement Agent shall consult with, and may (but shall not be obligated to) seek direction from, the Construction Consultant in making any advances or transfers under this Section 3.5. The Disbursement Agent shall have no liability for any advances or transfers made in accordance with this Section 3.5 absent bad faith, fraud, gross negligence or willful misconduct (as determined by a final and unappealable judgment of a court of competent jurisdiction).

4. Disbursements.

4.1 Procedure for Approving Disbursements.

4.1.1 ***Disbursement Requests***.

(a) The Borrower shall have the right from time to time, no more frequently than once per calendar month (the estimated draw schedule for which, as set forth in the Building Budget, may, for the avoidance of doubt, be varied by Borrower subject to the provisions of Section 6 hereof), to submit to the Disbursement Agent a request for the disbursement of funds from the Building Loan Company Funds Account and/or the Building Loan Proceeds Account (in accordance with Section 4.2) substantially in the form of

Exhibit A (a "**Disbursement Request**"), together with the exhibits attached thereto, as further described below. The Borrower shall not be entitled to any Disbursement unless and until a final, executed Disbursement Request, with all exhibits and attachments thereto, has been properly completed and submitted to the Disbursement Agent and the Construction Consultant in accordance with this Section 4.1. Disbursement Requests shall be acted on as follows:

(i) Within five (5) Business Days following the date of the submission of a Disbursement Request to the Disbursement Agent, the Construction Consultant and the Administrative Agent (the "**Submission Date**"), the Construction Consultant shall provide written notice to the Disbursement Agent and the Administrative Agent that it either approves or does not approve such Disbursement Request (it being understood that Construction Consultant's approval of a Disbursement Request shall be evidenced by its execution of its certificate in the form of Exhibit 1 to Exhibit A);

(ii) Within five (5) Business Days following the receipt of an approval of the Disbursement Request from the Construction Consultant (but no earlier than ten (10) Business Days from the Submission Date) which Disbursement Request shall, subject to the Disbursement Agent's approval pursuant to this clause (ii), be final and fully executed by the applicable parties thereto, the Disbursement Agent shall either (X) instruct the Account Bank to make the Disbursements requested in such Disbursement Request that satisfy each of the conditions set forth in Section 4.1.2; or (Y) notify the Borrower and the Administrative Agent in writing if it determines that such Disbursement Request fails to satisfy any such conditions, which notice shall describe the nature of such failure in reasonable detail; and

(iii) In the case of a Disbursement Request that requests a disbursement of funds representing proceeds of the Available Term A Loan Commitment, such disbursement shall be conditioned upon a borrowing of such Loans pursuant to Section 2.01 of the Loan Agreement and the deposit of the proceeds thereof into the Building Loan Proceeds Account, and after the approval of the Disbursement Agent of such Disbursement Request in accordance with clause (ii) above, the Borrower shall submit a Funding Notice to the Administrative Agent pursuant to Section 2.01 of the Loan Agreement with respect thereto.

(b) Such Disbursement shall be made in the amount specified in such approved Disbursement Request from the Holding Account specified in the approved Disbursement Request in accordance with Section 4.2 to the applicable Disbursement Account(s) specified in such Disbursement Request. Notwithstanding the foregoing, Debt Financing Costs as are to be paid from the Building Loan Interest Reserve Account pursuant to Section 4.3 of this Agreement shall not be transferred in accordance with the foregoing, but shall instead be paid as provided in such Section 4.3. Further, notwithstanding anything herein to the contrary, all disbursements from a Disbursement Account of funds originating from the Building Loan Proceeds Account shall be utilized for Costs of Improvement and also in accordance with the Section 22 Lien Law Affidavit.

(c) Notwithstanding any provision in Sections 4.1.1 or 4.1.2 to the contrary, the initial Disbursement on the Closing Date shall be made pursuant to such documentation and terms as are agreed upon by the Borrower, the Disbursement Agent, the Administrative Agent and the Construction Consultant.

(d) With regard to any transfers under this Agreement, it is understood that, in certain circumstances, the Account Bank may request that the Borrower provide additional documentation to effectuate such transfer, and the Borrower acknowledges that such transfers may not occur until it provides such documentation (and the Borrower in any event agrees to use commercially reasonable efforts to provide such documentation).

4.1.2 ***Conditions to Disbursements***. The Disbursement Agent's approval of a Disbursement Request as provided in Section 4.1.1(a)(ii) shall be subject to the following conditions, Upon receipt of the Construction Consultant's approval of the Disbursement Request and satisfaction of the conditions described below, the Disbursement Agent shall instruct the Account Bank to make the Disbursements specified in the corresponding Disbursement Request in accordance with Section 4.1.1(b):

(a) The Borrower shall have submitted to the Disbursement Agent a Disbursement Request as provided for herein pertaining to the amounts requested for disbursement, together with (i) all schedules thereto substantially in the form contemplated thereby; (ii) all lien releases, affidavits and agreements required to be attached under clause (c) of such Disbursement Request (with immaterial modifications thereto as may be reasonably required by such Contractor, or in a form otherwise reasonably satisfactory to the Disbursement Agent and the Construction Consultant) (including all lien affidavits of Contractors required thereunder); (iii) all certifications required to be included in the Disbursement Request, including (1) a certification by the Borrower that the Completion Date (to the extent it has not already occurred) is expected to occur on or before the Scheduled Completion Date and the Casino Opening Date (to the extent it has not already occurred) is expected to occur on or before the Scheduled Casino Opening Date; and (2) a certification by the Borrower that construction of the Project is in accordance with the then-applicable Building Budget and Building Loan Cost Schedule; (iv) the certifications of the Construction Manager, the Construction Consultant and the Architect substantially in the form of Exhibits 1, 2 and 3 to the Disbursement Request; to the extent required pursuant to the terms of the Disbursement Request; and (v) an amended Section 22 Lien Law Affidavit, to the extent required pursuant to the terms of this Agreement, which shall have been filed in the Sullivan County Clerk's Office;

(b) The Borrower shall have confirmed that (i) the Administrative Agent, the Collateral Agent and the Construction Consultant shall have received copies of each Key Construction and Design Contract executed on or before the date of such Disbursement Request, together with a Consent signed by the counterparty to such Key Construction and Design Contract if and to the extent required under Section 6.3; and (ii) Borrower or the Construction Manager shall have procured and delivered to the Collateral Agent an original payment and performance bond naming the Collateral Agent (on behalf of the Administrative

Agent and the Lenders) as an additional beneficiary or co-obligee in respect of each Key Construction and Design Contract (other than the Construction Management Agreement and any design or similar contract) unless such Key Construction and Design Contract is covered by the Construction Manager's sub-guard insurance. Any such payment and performance bonds shall be commercially reasonable and shall be in full force and effect;

(c) With regard to any Disbursement occurring subsequent to the Closing Date, the Borrower shall have:

(i) caused the Title Company to have delivered to the Administrative Agent, the Collateral Agent, the Disbursement Agent and the Construction Consultant an endorsement to the Lenders' Title Policy in the form attached hereto as Exhibit K or in such other form as may be reasonably acceptable to the Disbursement Agent, the Collateral Agent and the Administrative Agent, dated as of the date of such Disbursement (each such endorsement, an "**Update Endorsement**"), which Update Endorsement shall:

(1) (A) insure that there are no intervening Liens or encumbrances which may then or thereafter take priority over the Lien of the Mortgage *other than* (1) Permitted Liens set forth on Schedule B of the Lenders' Title Policy issued on the Closing Date, and (2) Senior Permitted Liens (other than mechanic's liens or other liens, charges or orders filed against the Project by any Contractor or other party related to the provision of materials or services constituting Building Loan Costs);

(B) insure that there are no mechanic's liens or other liens, charges or orders filed against the Project by any Contractor or other party related to the provision of materials or services constituting Building Loan Costs other than (i) for purposes of the Update Endorsement required to be delivered with respect to each Disbursement Request prior to Completion, Permitted Mechanics' Liens or (without duplication) Liens relating to Disputed Amounts; and (ii) for purposes of the Update Endorsement required to be delivered at Completion, with respect to Permitted Amounts for which there are Reserved Amounts;

(C) except as set forth in clause (A) above, not add any additional exclusions or exceptions to the coverage provided by the Lenders' Title Policy other than Permitted Liens that are subordinate to the Lien of the Mortgage; and

(D) bring the date of the Lenders' Title Policy forward to the date of the Disbursement immediately preceding the subject Disbursement; or

(2) otherwise be in form and substance reasonably acceptable to the Disbursement Agent, the Collateral Agent and the Administrative Agent; and

(ii) satisfied the Lien Waiver Deliverables Requirement;

(d) The Borrower shall have delivered to the Construction Consultant (and the Disbursement Agent shall have received written confirmation of such delivery from the Construction Consultant) a written inventory substantially in the form of Schedule 3 to

the Borrower's Disbursement Request identifying all materials, machinery, fixtures, furniture, equipment or other items purchased or manufactured for incorporation into the Project for which the Borrower has paid, or will pay from the Disbursement, all or a portion of the purchase price thereof but which, at the time of the Disbursement Request, (x) are not located at the Project site, or (y) are located at the Project site but are not expected to be incorporated into the Project within one hundred eighty (180) days after such Disbursement Request (the materials described in clauses (x) and (y), collectively, the "**Unincorporated Materials**") and including the cost of such Unincorporated Materials, together with evidence reasonably satisfactory to the Construction Consultant that the following conditions have been satisfied with respect to such Unincorporated Materials:

(i) all Unincorporated Materials for which full payment has previously been made or is being made with the proceeds of the Disbursement to be disbursed are, or will be upon full payment, owned by the Borrower, and all lien rights or claims of the supplier have been or will be released simultaneously with such full payment and such payment shall be evidenced by paid invoices, the bills of sale, certificates of title or other evidence reasonably satisfactory to the Construction Consultant;

(ii) the Unincorporated Materials are consistent with the Final Plans and Specifications;

(iii) all Unincorporated Materials are (to the extent not in fabrication) properly inventoried, securely stored, protected against theft and damage at the Project site or at such other location which has been specifically identified by its complete address to the Construction Consultant (or if the Borrower cannot provide the complete address of the current storage location, the Borrower shall list the name and complete address of the applicable contracting party supplying or manufacturing such Unincorporated Materials);

(iv) all Unincorporated Materials are insured against casualty, loss and theft for an amount equal to their replacement costs under policies naming the Collateral Agent as an additional insured and the Disbursement Agent as loss payee to the extent required under the Loan Documents;

(v) the amounts paid by the Borrower in respect of all Unincorporated Materials, when combined with the amounts paid by the Borrower in respect of "Unincorporated Materials" under and as defined in the Project Disbursement Agreement (in each case, that constitute Unincorporated Materials or "Unincorporated Materials" under and as defined in the Project Disbursement Agreement at the time the calculation of such amounts is made for the purposes of this clause (v)), are at no time more than $40,000,000 in the aggregate plus any additional amounts reasonably approved by the Disbursement Agent in consultation with the Construction Consultant; and

(vi) the Construction Consultant shall have confirmed the satisfaction of the condition required in subparagraph (iii) above in its reasonable discretion, and in connection therewith the Construction Consultant may, but shall not be required to,

upon reasonable prior notice and at reasonable times, visit the site of and inspect the Unincorporated Materials at the Borrower's expense;

(e) The Disbursement Request on its face has been completed as to the information required therein and all required attachments, have been attached;

(f) No Disbursement Agent Responsible Officer shall have received a written notice (including a Disbursement Request) from any of the Borrower, the Construction Manager, the Architect, the Collateral Agent, the Administrative Agent or the Construction Consultant (i) that a Default or an Event of Default exists (other than those that would be cured upon the making of the subject Disbursement, as hereinafter provided), or (ii) of any material error, inaccuracy, misstatement or omission of material fact in any Disbursement Request or in any exhibit or attachment thereto or any information provided by the Borrower which has not been theretofore corrected;

(g) The Borrower shall have paid or arranged for payment, out of the requested Disbursement, of all fees, expenses charges and Debt Financing Costs (other than Debt Financing Costs to be paid from the Building Loan Interest Reserve Account pursuant to Section 4.3 of this Agreement) due and payable under the Loan Documents, as certified by the Borrower to the Disbursement Agent;

(h) With respect to each Disbursement Request other than the first Disbursement Request issued hereunder, the Borrower shall have (i) certified to the Disbursement Agent and substantiated to the Construction Consultant's reasonable satisfaction (as set forth in the Construction Consultant's certificate substantially in the form of Exhibit 2 to the Disbursement Request) in the manner contemplated by the Disbursement Request, that the amounts previously drawn by the Borrower from the Disbursement Accounts to pay Hard Costs have, in fact, been used to pay Hard Costs in accordance with the Building Budget; and (ii) certified to the Disbursement Agent that (A) the amounts previously drawn by the Borrower from the Disbursement Accounts to pay Soft Costs have, in fact, been used to pay Soft Costs in accordance with the Building Budget, and (B) after giving effect to the requested Disbursement, the balance in the Building Loan Disbursement Account (other than any amounts on account of interest earned on amounts on deposit therein) will not exceed the amount required to pay Building Loan Costs then due and payable as specified in the applicable Disbursement Request and the balance in the Building Loan Cash Management Account will not exceed the Cash Management Allowance;

(i) The Project shall be In Balance, as certified by the Borrower in the relevant Disbursement Request;

(j) The absence of any Default or Event of Default, as certified by the Borrower in the relevant Disbursement Request (other than those that would be cured upon the making of the subject Disbursement, as hereinafter provided);

(k) For Disbursements from the Building Loan Proceeds Account, each of the conditions precedent set forth in Section 4.02 of the Loan Agreement (other than

clause (a) thereof) shall have been satisfied or waived, as certified by the Borrower in the relevant Disbursement Request;

(l) [Intentionally Omitted;]

(m) The Borrower shall certify, and provide such supporting documentation as Disbursement Agent or Construction Consultant may reasonably request, that either any such Disbursement Request or other change to the Building Budget made in accordance with Section 6.1 hereof does not require the filing of an amended Section 22 Lien Law Affidavit in accordance with the Lien Law or, if such Disbursement Request or other change to the Building Budget does require the filing of an amended Section 22 Lien Law Affidavit, the Borrower shall certify that it has provided the Administrative Agent, Disbursement Agent and Construction Consultant the following:

(i) a proposed amended Section 22 Lien Law Affidavit in accordance with Section 6.1, which shall be reasonably acceptable to Disbursement Agent and Construction Consultant; *provided, however*, if the proposed amended Section 22 Lien Law Affidavit reflects a reduction of the net sum available to Contractors from that reflected in the then current Section 22 Lien Law Affidavit, Borrower shall include in the Disbursement Request a certification that the proposed reduction is a the result of Realized Savings and shall provide the following:

(1) a list of all Contractors that are affected by the proposed change (the "**Required Contractors**");

(2) fully executed lien waivers and consents substantially in the form attached as Attachment 1 to such Disbursement Request from all such Required Contractors; and

(3) such additional information and documentation as the Disbursement Agent or Construction Consultant may reasonably request; and

(ii) a Building Budget Amendment Certificate in accordance with Section 6.1 hereof; and

(n) The Borrower has provided Disbursement Agent with copies of the most recent monthly statements from each Account Bank with regard to balances in the Accounts.

The Disbursement Agent shall be entitled to rely upon the certifications of the Borrower, the Construction Manager, the Architect and the Construction Consultant in the relevant Disbursement Request in determining that the conditions specified in this Section 4.1.2 have been satisfied unless the Disbursement Agent shall have received further certifications indicating that prior certifications are inaccurate. For purposes of determining whether the condition to Disbursement set forth in Section 4.1.2(j) has been satisfied, any Default or Event of Default that

would be cured upon the application of the requested Disbursement of funds shall not be deemed a Default or Event of Default hereunder, and such curing Disbursement may be made, at the request of the Administrative Agent, directly to the payee(s) thereof.

4.1.3 ***Non-Satisfaction of Conditions.*** In the event that any of the conditions of Section 4.1.2 described above has not been satisfied in respect of any Disbursement Request and for so long as such conditions are not satisfied (for the purposes of which determination the Disbursement Agent shall in all cases be entitled to rely solely upon the certificates and attachments thereto provided to the Disbursement Agent in accordance with the terms of this Agreement), the Disbursement Agent shall not instruct the Account Bank to disburse any funds from the Holding Accounts pursuant to a Disbursement Request, except as provided in Section 3.2 or 4.3, and unless otherwise instructed by the Administrative Agent.

4.2 Disbursement Priority Among Accounts. All Disbursements of funds from the Building Loan Proceeds Account and the Building Loan Company Funds Account to the Disbursement Accounts (or directly to pay Building Loan Costs or compensation payable to the Disbursement Agent or the Administrative Agent in accordance with Sections 3.2, 3.3, 3.5, 4.1.3 or 4.4, as applicable, and any reimbursement to the Borrower under Section 4.4), or for the purpose of a Cash Collateral Posting, shall at all times be made in the following order of priority:

(a) First, from the funds on deposit in, or at such time credited to, the Building Loan Company Funds Account, until such funds are Exhausted; and

(b) Second, from funds on deposit in, or at such time credited to, the Building Loan Proceeds Account, until such funds are Exhausted.

4.3 Interest Payments.

4.3.1 Not less than five (5) Business Days prior to each Interest Payment Date until the Building Loan Interest Reserve Account is Exhausted, the Administrative Agent shall inform the Disbursement Agent and the Borrower of the amounts required to be paid on such Interest Payment Date with respect to the Facilities, including (x) interest on the Loans due and payable on the applicable Interest Payment Date, (y) net amounts due and payable under the Specified Hedging Agreements to the counterparties thereunder (to the extent allocable to the principal amount of the Loans under the Loan Agreement) (other than termination payments), and (z) any fees described in Section 2.10(b) or (d) of the Loan Agreement then due and payable; *provided, however,* that in the event that the Administrative Agent fails to provide such information to the Disbursement Agent, then the Borrower may, but shall have no obligation to, provide such information to the Disbursement Agent, subject to Administrative Agent's confirmation (it being understood that any failure by the Administrative Agent to provide such information shall not relieve the Borrower from its obligations to make such payments on such Interest Payment Date). Additionally, the Borrower shall inform the Administrative Agent and the Disbursement Agent of amounts to be paid with respect to the entering into of Hedging Agreements required pursuant to Section 5.13 of the Loan Agreement, and shall have the right to request that such amounts be paid from the Building Loan Interest Reserve Account as described in Section 4.3.2 below.

4.3.2 On or before each Interest Payment Date until the Building Loan Interest Reserve Account has been Exhausted, and subject to the last sentence of this Section 4.3.2, the Disbursement Agent shall instruct the Account Bank to make payment on such Interest Payment Date to the Administrative Agent from amounts on deposit in the Building Loan Interest Reserve Account in the amount requested by the Borrower or the Administrative Agent pursuant to Section 4.3.1. Such payments may be made without the requirement of obtaining any further consent or action on the part of the Borrower with respect thereto, and the Borrower hereby constitutes and appoints the Disbursement Agent and the Account Bank as its true and lawful attorney-in-fact to provide such instructions and to make such payments, respectively, and this power of attorney shall be deemed to be a power coupled with an interest and shall be irrevocable. Each of the Administrative Agent and the Borrower acknowledge that nothing in this Section 4.3.2 shall in any way exonerate or diminish the Borrower's obligation to make all payments under the Loan Documents as and when due. Additionally, until the Building Loan Interest Reserve Account has been Exhausted, the Disbursement Agent shall instruct the Account Bank to make payment from amounts on deposit in the Building Loan Interest Reserve Account to such Persons and in the amount requested by the Borrower pursuant to Section 4.3.1 to be paid with respect to the entering into of Hedging Agreements required pursuant to Section 5.13 of the Loan Agreement. Such payments may be made without the requirement of obtaining any further consent or action on the part of the Borrower with respect thereto.

4.4 Borrower's Reimbursement of Previously Funded Building Loan Costs. If, at any time after the Closing Date, the Borrower shall be unable to satisfy the conditions precedent to any disbursement set forth in this Section 4 (other than the In-Balance requirement set forth in Section 4.1.2(i)), then the Borrower shall be entitled to pay Building Loan Costs then due and owing from other funds available to the Borrower (other than amounts available under the Completion Guaranty), including from proceeds of Subordinated Indebtedness (to the extent permitted under the Loan Agreement), and to later seek reimbursement of such Building Loan Costs from the Building Loan Company Funds Account or the Building Loan Proceeds Account, as applicable, as part of a Disbursement Request as and when permitted in accordance with the terms of this Agreement at the time (if any) that the Borrower is able to satisfy all the conditions precedent to disbursement set forth in this Section 4 and provided that after giving effect to such reimbursement, the Project shall be In Balance. To the extent that the payment of such Building Loan Costs was made with the proceeds of equity contributions or the proceeds of Subordinated Indebtedness (to the extent permitted under the Loan Agreement) made to the Borrower after the Closing Date, the Borrower shall be permitted to repay or distribute such reimbursed amounts to its members or the applicable providers of such Subordinated Indebtedness, as applicable, as and to the extent provided in the Loan Documents. Notwithstanding the foregoing and for the avoidance of doubt, the Borrower may not seek reimbursement from the Building Loan Company Funds Account, and may not repay or distribute any amounts to its members or providers of Subordinated Indebtedness, for any equity contributions or proceeds of Subordinated Indebtedness made to Borrower in order to satisfy the In Balance requirement or in connection with Section 2.1 of the Completion Guaranty.

4.5 Disbursement of Funds Following Completion.

4.5.1 In the event that, as of the Completion Date, there exist Excess Permitted Amounts, then Borrower shall contribute Excess Reserved Amounts into the Building Loan Company Funds Account as a condition to declaring Completion. Borrower shall, within three (3) Business Days after the Completion Date, provide the Disbursement Agent with a statement of all funds then on deposit in the Building Loan Company Funds Account, Building Loan Proceeds Account, and the Disbursement Accounts, and shall designate the total amount of such funds that represent (a) Reserved Amounts; (b) Excess Reserved Amounts that were contributed by Borrower on the Completion Date; and (c) any amounts that, as of the Completion Date, are in excess of Reserved Amounts and that do not constitute Excess Reserved Amounts (such amounts, the "**Loan Repayment Funds**"). Borrower shall, within five (5) Business Days after the Completion Date, instruct the Disbursement Agent to instruct the Account Banks to apply all Loan Repayment Funds to the repayment of Loans pursuant to Section 2.13(d) of the Loan Agreement (which, in accordance with Section 2.12(c) of the Loan Agreement, shall be made without prepayment penalty, premium or similar charge). If the Borrower shall fail to provide such instruction under this Section 4.5, then the Disbursement Agent, the Collateral Agent or the Administrative Agent shall be entitled to provide such instruction.

4.5.2 After the Completion Date, Borrower may request a disbursement to the Building Loan Disbursement Account of Reserved Amounts and Excess Reserved Amounts (such amounts, the "**Remaining Funds**") toward satisfaction of the Punchlist Completion Amounts, the Disputed Amounts and the Retainage Amounts for which such amounts were reserved, in each case as Borrower shall designate, by delivery to the Disbursement Agent of a written request for release of such Remaining Funds. Such request shall represent the absence of any Default or Event of Default, specify the amount of Remaining Funds so requested and the matter to which they are to be applied, and shall include as attachments copies of invoices or other supporting documentation reasonably evidencing the applicable punchlist item, dispute and/or retainage item to which such requested release pertains. Upon receipt of the foregoing, the Disbursement Agent shall instruct the Account Bank to release such requested amount to the Building Loan Disbursement Account for such application. Borrower shall, until such time as Final Completion is declared, provide Disbursement Agent and Construction Consultant with monthly written reports describing the current status of all such outstanding punchlist, dispute and/or retainange matters.

4.6 Final Disbursement. The Borrower shall, within two (2) Business Days after the Final Completion Date, instruct the Disbursement Agent to instruct the Account Banks to apply (X) all remaining Reserved Amounts in the Accounts to the repayment of the Loans in the manner set forth in Section 2.13(d) of the Loan Agreement (which, in accordance with Section 2.12(c) of the Loan Agreement, shall be made without any prepayment penalty, premium or similar charge), (Y) all remaining funds in the Building Loan Interest Reserve Account, if any, toward Debt Financing Costs until Exhausted, and (Z) all remaining Excess Reserved Amounts to Borrower, it being agreed that such funds shall constitute the last dollars used. If the Borrower shall fail to provide such instruction, the Disbursement Agent, the Collateral Agent or the Administrative Agent shall be entitled to provide such instruction. At the request of the Borrower, and at the Borrower's expense, the Building Loan Proceeds Account, the Building Loan Company Funds Account and the

Disbursement Accounts may be closed following the transfers contemplated in this Section 4.6, and the Building Loan Interest Reserve Account may be closed when all amounts on deposit therein are Exhausted, and in any such case the Collateral Agent and/or the Administrative Agent, as applicable, shall promptly deliver such notices to the applicable Account Banks under the applicable Control Agreements as are necessary to close the applicable Accounts and terminate the applicable Control Agreements. Notwithstanding the foregoing, the Borrower shall also be permitted to close an Account in connection with the substitution of an Account Bank pursuant to Section 12.17.

4.7 Cash Collateral Posting. The Borrower may from time to time request the Disbursement Agent to disburse funds from the Building Loan Proceeds Account or Building Loan Company Funds Account for a Cash Collateral Posting, and the Disbursement Agent shall comply with such request, *provided, however,* that the Borrower has provided the Disbursement Agent with a written certification that (a) such request complies with the definition of Cash Collateral Posting, (b) no Default or Event of Default has occurred and is continuing (or will result from such Cash Collateral Posting), and (c) the Project will be In Balance before and after giving effect to such Cash Collateral Posting. Section 12.17.

4.8 Disbursements in Respect of Entertainment Village. The parties hereto acknowledge that the portion of the Project known as the "Entertainment Village" shall be constructed pursuant to EV Contracts to be entered into after the Closing Date. Notwithstanding anything to the contrary herein, no Disbursements shall be made hereunder in respect of amounts intended to be applied toward the "**EV Construction Contract**" Line Item or in respect of EV Architect fees and amounts under the "**Architect and EV Architect Fees**" Line Item unless and until the following conditions have been satisfied:

(a) For Disbursements in respect of amounts intended to be applied in respect of EV Architect fees and amounts under the "**Architect and EV Architect Fees**" Line Item, EV Subsidiary shall have entered into the EV Architect's Agreement, and in connection therewith the Company has satisfied all of the provisions of Section 6.3 hereof; *provided, however,* that Disbursements not exceeding $250,000 in the aggregate and that are to be applied toward architectural work needed for the Entertainment Village may be made prior to the execution of the EV Architect's Agreement, provided that all conditions for Disbursement are otherwise satisfied hereunder (other than, for the avoidance of doubt, certifications that would have otherwise pertained to the EV Architect's Agreement by the EV Architect or other third party), and provided that such amounts are allocated to the "**Architect and EV Architect Fees**" Line Item;

(b) For Disbursements in respect of amounts intended to be applied toward the "**EV Construction Contract**" Line Item, EV Subsidiary shall have entered into the EV Construction Contract, and in connection therewith the Company has satisfied all of the provisions of Section 6.3 hereof; *provided, however,* that Disbursements not exceeding $5,000,000 in the aggregate and that are to be applied toward site work needed for the Entertainment Village may be made prior to the execution of the EV Construction Contract, provided that all conditions for Disbursement are otherwise satisfied hereunder (other than, for the avoidance of doubt, certifications that would have otherwise pertained to the EV Construction Contract by the EV Contractor, the EV Architect or

other third party), and provided that such amounts are allocated to the "**EV Construction Contract**" Line Item;

(c) Subject to the provisos in clauses (a) and (b) above, EV Contractor, EV Architect and Construction Consultant shall have provided certificates substantially similar to certificates that would otherwise have been provided by Construction Manager, Architect and Construction Consultant were such Disbursements to have been made in respect of the Construction Management Agreement;

(d) EV Subsidiary shall countersign each Disbursement Request and any other certificates hereunder pertaining to Disbursements in respect of the Entertainment Village, all other conditions hereunder with regard to Disbursements generally shall be satisfied, and each such certificate or requirement pertaining to the Construction Management Agreement and/or the Construction Manager shall similarly apply to the EV Construction Contract and/or the EV Contractor, and each such certificate or requirement pertaining to the Architect shall similarly apply to the EV Architect, *mutatis mutandis*; and

(e) For the avoidance of doubt, no Realized Savings shall be attributable to the "**EV Construction Contract**" Line Item prior to the execution of the EV Construction Contract.

5. Representations and Warranties. The Borrower represents and warrants on the Closing Date and on the date of each Disbursement, for the benefit of the Disbursement Agent, the Collateral Agent, the Administrative Agent and the Lenders, as follows:

5.1 In Balance. The Project is In Balance.

5.2 Sufficiency of Interests and Project Documents.

5.2.1 Other than those services to be performed and materials to be supplied that can be reasonably expected to be commercially available when and as required, each Loan Party (a) owns or holds under lease or pursuant to easements all of the property interests and have entered into all documents and agreements in respect thereof required as of the date this representation is made or deemed made, and (b) has no knowledge of facts that would lead a reasonable person to conclude that the Loan Parties will be unable to, when required, enter into any document or agreement, in each case necessary to develop, construct and complete the Project and own, lease and/or possess and operate the Project on the applicable Mortgaged Property in accordance with all applicable laws, Applicable Permits and other legal requirements and the Project Schedule and as contemplated in the Loan Documents and the Project Documents.

5.2.2 The Administrative Agent and the Collateral Agent have been provided access to true, complete and correct copies of each of the Key Construction and Design Contracts in effect or required to be in effect as of the date this representation is made or deemed made (including all exhibits, schedules, side letters and disclosure letters referred to therein or delivered pursuant thereto, if any). On the Closing Date, the Project Documents listed on Exhibit J constitute all of the Key Construction and Design Contracts that have been entered into as of the Closing Date and are necessary for the construction or operation of the Project (excluding

Construction Contracts entered into in the ordinary course of business for services or materials that are easily obtained from replacement contractors or vendors on similar terms). On the date of each Disbursement, the Project Documents listed on Exhibit J or, if any Loan Party has entered into any Key Construction and Design Contracts after the Closing Date, the Project Documents listed on an amended Exhibit J delivered to the Disbursement Agent, the Administrative Agent and the Construction Consultant prior to the date of such Disbursement, constitute all of the Key Construction and Design Contracts that have been entered into as of the date of such Disbursement and that are necessary for the construction or operation of the Project (excluding Construction Contracts entered into in the ordinary course of business for services or materials that are easily obtained from replacement contractors or vendors on similar terms). Each Key Construction and Design Contract listed on Exhibit J (as such Exhibit may be amended from time to time as noted above) is in full force and effect, enforceable against the Persons party thereto in accordance with its terms, subject only to bankruptcy, insolvency, moratorium and other similar laws and principles of equity.

5.2.3 All conditions precedent to the obligations of the respective parties (other than a Loan Party) under the Key Construction and Design Contracts to which a Loan Party is a party that are in effect as of the date this representation is made or deemed made have been satisfied, except for such conditions precedent (a) the failure of which to be satisfied would not reasonably be expected to have a Material Adverse Effect or (b) which by their terms cannot be met until a later stage in the construction of the Project, and the Borrower has no reason to believe that any such condition precedent (other than those the failure of which to satisfy could not reasonably be expected to have a Material Adverse Effect) cannot be satisfied on or prior to the appropriate stage in the development or construction of the Project.

5.3 Building Budget; Building Loan Cost Schedule.

5.3.1 The Building Budget (a) is, to the Borrower's knowledge, based on reasonable assumptions as to all legal and factual matters material to the estimates set forth therein and is consistent with the provisions of the Loan Documents and the Project Documents in all material respects, (b) has been and will be prepared in good faith and with due care, (c) sets forth, for each Line Item, the total costs anticipated to be incurred to achieve the Casino Opening Date on or before the Scheduled Casino Opening Date, to achieve Completion on or before the Scheduled Completion Date, and to achieve Final Completion promptly thereafter, (d) fairly represents in all material respects the Borrower's reasonable expectation as to the matters covered thereby as of its date, and (e) sets forth the total amount of Building Loan Costs, including contingencies.

5.3.2 To the Borrower's knowledge, the aggregate anticipated costs to complete the "Work" under the Construction Management Agreement as set forth in the anticipated cost report to be provided (from time to time) by the Construction Manager to the Borrower under the Construction Management Agreement, and as reasonably approved by the Construction Consultant, is not greater than the amount set forth for the then-applicable **"Construction Management Agreement"** Line Item in the Building Loan Cost Schedule (as in effect from time to time), and from and after the execution of the EV Construction Contract, the aggregate anticipated

costs to complete the work thereunder shall not be greater than the aggregate amount set forth for the then-applicable "**EV Construction Contract**" Line Item in the Building Loan Cost Schedule.

5.3.3 The Building Loan Cost Schedule (as in effect from time to time) is true and correct in all material respects, has been prepared in good faith with due care, fairly represents the Borrower's reasonable expectations as to the matters set forth therein, and sets forth each of the items described in clauses (a) through (c) of Section 6.5.

5.4 Force Majeure. Neither the business nor the properties of the Borrower nor any Loan Party nor, to the Borrower's knowledge, any other Person party to a Key Construction and Design Contract is affected by any Force Majeure Event that could reasonably be expected to have a Material Adverse Effect.

5.5 Project Schedule. To the Borrower's knowledge, the Project Schedule accurately specifies in summary form the work that the Borrower proposes to be completed in each calendar quarter from the Closing Date through Final Completion of the Project, all of which the Borrower reasonably expects to be timely achieved.

5.6 Plans and Specifications. The Plans and Specifications and the Final Plans and Specifications, as and when they exist, (a) are, to the Borrower's knowledge, based on reasonable assumptions as to all legal and factual matters material thereto, (b) are substantially consistent with the provisions of the Loan Documents and the Project Documents in all material respects, (c) have been prepared in good faith and with due care, (d) are accurate in all material respects and fairly represent the Borrower's reasonable expectation as to the matters covered thereby, and (e) are consistent with constructing the Project to include the Minimum Facilities.

5.7 Lien Law. Amounts deposited into the Building Loan Proceeds Account and any amounts disbursed therefrom shall be used for only the purposes of paying Costs of Improvement and in accordance with the Section 22 Lien Law Affidavit. No changes to the Building Budget or otherwise have occurred such that an updated Section 22 Lien Law Affidavit is required to be filed by the Borrower pursuant to Section 6.1.4 of this Agreement.

6. Covenants. The Borrower covenants and agrees, with and for the benefit of the Disbursement Agent, the Collateral Agent, the Administrative Agent and the Lenders, to comply with each of the following provisions:

6.1 Amendments to Building Budget. The Building Budget for the Project may be amended from time to time only in the manner set forth herein and subject to the limitations and satisfaction of the requirements in Section 4.1.2(m). Subject to the limitations and satisfaction of the requirements of Section 4.1.2(m), the Borrower shall have the right, from time to time, to amend the Building Budget without the consent of the Construction Consultant, the Collateral Agent, the Disbursement Agent or the Administrative Agent to change the amounts allocated for specific Line Items in accordance with the provisions hereof. Notwithstanding the foregoing, to the extent that, at any time, the Remaining Costs with regard to a particular Line Item of the Building Budget shall exceed the Remaining Budgeted Amount with respect to such Line Item, then the Borrower shall, within the next thirty (30) days or on or prior to the next succeeding submission of a Disbursement

Request (whichever occurs first), amend the Building Budget in accordance with the provisions hereof to eliminate such excess; *provided, however,* that, notwithstanding anything herein to the contrary, the Total Budgeted Amount with respect to the "**Debt Financing Cost**" Line Item may not be modified (except in conjunction with an extension of the Scheduled Casino Opening Date and/or Casino Opening Deadline pursuant to Section 6.15 hereof) without the prior written consent of the Administrative Agent in its sole discretion. With respect to any amendment of the Building Budget: (a) the Borrower may not add any new Line Item or modify the description of any Line Item, without the consent of the Administrative Agent in consultation with the Construction Consultant (such approval not to be unreasonably withheld, delayed or conditioned), (b) for each Line Item, the Remaining Budgeted Amount must equal or exceed the Remaining Costs contemplated by such Line Item, and (c) the requirements of Section 4.1.2(m) shall be satisfied with respect to any such amendment which results in a change to the Section 22 Lien Law Affidavit.

6.1.1 ***Sources of Funds for Line Item Increases***. A Line Item in the Building Budget may be increased only if the funds for such increase are made available in the Building Budget from one of the following categories (*provided, however*, that any increases to a Line Item in the Building Budget resulting from Scope Changes may *not* be paid for with funds described in clause (d) below, but may be paid for with funds described in clauses (a), (c) and (f) below in any amount, and may be paid for with funds described in clauses (b) and (e) below in an aggregate amount, when aggregated with amounts permitted under Section 6.1.1 of the Project Disbursement Agreement, do not exceed the Scope Change Limit):

(a) any Realized Savings from another Line Item, or any Project Budget Realized Savings;

(b) the reduction of the "**Building Contingency**" Line Item in the Building Budget;

(c) additional Cash equity irrevocably contributed to the Borrower after the Closing Date in a manner not prohibited by the Loan Agreement, or Cash proceeds of Subordinated Indebtedness (to the extent permitted under the Loan Agreement) provided to the Borrower after the Closing Date, in each case, deposited (and recorded as such) in the Building Loan Company Funds Account (excluding amounts funded pursuant to the Completion Guaranty);

(d) amounts funded pursuant to the Completion Guaranty; or

(e) Contingency Transfers utilizing amounts under the "**Project Contingency**" Line Item in the Project Budget; or

(f) Contingency Transfers utilizing amounts under the "**Flex Contingency**" Line Item in the Project Budget.

6.1.2 ***Building Budget Amendment Process***. Any amendment to the Building Budget shall be in writing. Any such amendment shall identify with reasonable particularity (a) the Line Item to be increased or decreased (if any), (b) the amount of the increase or decrease

(if any), (c) in the event of an increase in a Line Item, the source proposed to be utilized to pay for the increase in accordance with Section 6.1.1, and (d) in the case of a decrease in a Line Item, the Realized Savings in the amount of such decrease. The parties acknowledge that a portion of any cost reduction achieved with respect to the work performed under a Construction Contract or subcontract may be payable to the Construction Manager or another Contractor or subcontractor under such Construction Contract or subcontract (subject to the conditions contained in the Construction Management Agreement, such other Construction Contract or subcontract with respect to application of savings), and that, in such case, the entire reduction may not become Realized Savings. Construction Line Items may be reduced only upon obtaining, and in the amount of, Realized Savings. Any amounts of Realized Savings, contingency amounts or previously allocated reserves so identified for use in connection with a particular Line Item thenceforth shall be deemed dedicated to the particular Line Item, unless and until the Building Budget is amended to reduce the amounts budgeted for the Line Item of the Building Budget. In the event Project Budget Realized Savings is utilized as a source for any Line Item increase hereunder, then there shall be a corresponding amendment to the Project Budget pursuant to Section 6.1 of the Project Disbursement Agreement reflecting such reallocation of funds.

6.1.3 ***Building Budget Amendment Certificate***. The Borrower shall submit the Building Budget amendment to the Disbursement Agent, the Administrative Agent and the Collateral Agent by an Officer's Certificate substantially in the form of Exhibit C (a "**Building Budget Amendment Certificate**"), together with the certificates of the Construction Manager and EV Contractor (for the Construction Management Agreement and EV Construction Contract, respectively, if modified by such Building Budget amendment) and the Construction Consultant, substantially in the form of Exhibits 1 and 2 to the Building Budget Amendment Certificate. If the Building Budget amendment requires the filing of an amended Section 22 Lien Law Affidavit, the Borrower shall also satisfy the requirement of Section 4.1.2(m) as a condition of the effectiveness of such Building Budget amendment. Upon submission of such Building Budget Amendment Certificate, together with the Exhibits thereto, and the filing of the Section 22 Lien Law Affidavit in accordance with Section 4.1.2(m) and Section 6.1.4, if applicable, such amendment shall become effective hereunder, and the Building Budget for the Project shall thereafter be as so amended.

6.1.4 ***Section 22 Lien Law Affidavit***. Notwithstanding anything contained in this Section 6.1 to the contrary, if, in connection with any Building Budget amendment, any Construction Contract Amendment, or otherwise, any of the amounts set forth in the Section 22 Lien Law Affidavit executed on the Closing Date (as may have been previously updated in accordance with this Section) shall change such that the Section 22 Lien Law Affidavit would misrepresent the amount available for Costs of Improvement, the Borrower shall (i) have complied with the requirements of Section 4.1.2(m), if applicable, and (ii) the Borrower shall prepare, execute and deliver an amended Loan Agreement and Section 22 Lien Law Affidavit, in form and substance reasonably satisfactory to the Administrative Agent, Disbursement Agent and the Construction Consultant, to the Collateral Agent for filing in Sullivan County Clerk's Office and such filing shall take place prior to any further disbursements from the Building Loan Proceeds Account.

6.1.5 ***Debt Financing Cost Line Item***. In connection with any change to the Scheduled Casino Opening Date pursuant to Section 6.15 that extends the Scheduled Casino

Opening Date and/or the Casino Opening Deadline in effect as of the Closing Date, (i) Borrower shall amend the Building Budget in a manner consistent with the provisions of Section 4.1.2(m) and Section 6.1.2 to increase the Total Budgeted Amount with respect to the "**Debt Financing Costs**" Line Item to cover Debt Financing Costs through the then applicable Interest Reserve Date, and (ii) the funds for such increase shall be made available in the Building Budget from funds available pursuant to Section 6.1.1(c) or as otherwise permitted under Section 6.15.

6.2 Construction Contract Amendment Process. The Borrower shall not enter into or approve any Construction Contract Amendment except as set forth in this Section 6.2. The Borrower shall have the right from time to time as provided below, to amend or permit the amendment of any Construction Contract including to change the scope of work for any portion of the Project and/or the Borrower's payment obligations in connection therewith.

Any Construction Contract Amendment that (i) results in a cost increase in a Key Construction and Design Contract in excess of $500,000 individually or, when taken together with all other Construction Contract Amendments, results in a cost increase of $1,500,000 in the aggregate, (ii) when taken together with all related Construction Contract Amendments and after giving effect to any new, related Construction Contracts, results in a material lessening of the scope or quality of the work constituting the design or construction of the Project, or (iii) when taken together with all additions hereunder and under Section 6.2 of the Project Disbursement Agreement, results in the likely addition of three (3) or more weeks to the Project Schedule (any such amendment described in clauses (i) through (iii) above, a "**Material Construction Contract Amendment**") shall be in writing and shall identify with reasonable particularity all changes being made.

The Borrower shall not permit any Material Construction Contract Amendment to become effective unless and until:

(a) the Borrower and all Contractors party thereto have executed and delivered to the Disbursement Agent, the Construction Consultant, the Administrative Agent and the Collateral Agent the Material Construction Contract Amendment (with the effectiveness thereof subject only to satisfaction of the applicable conditions in clauses (b), (c), (d), (e) and (f) below);

(b) the Borrower has submitted the Material Construction Contract Amendment to the Disbursement Agent and the Administrative Agent together with an Officer's Certificate substantially in the form of Exhibit D (a "**Construction Contract Amendment Certificate**"), together with the certificates of the Construction Consultant, the Construction Manager (to the extent the Material Construction Contract Amendment relates to any Construction Contract to which the Construction Manager is a party), the EV Contractor (to the extent the Material Construction Contract Amendment relates to any Construction Contract to which the EV Contractor is a party) and the Architect substantially in the forms of Exhibits 1 through 3 to such Construction Contract Amendment Certificate;

(c) if the Material Construction Contract Amendment will result in an amendment to the Building Budget, the Borrower shall have complied with the requirements of Section 6.1;

(d) if the Material Construction Contract Amendment will cause the Project to no longer be In Balance, then the Borrower shall have complied with the requirements of Section 6.4;

(e) if the Material Construction Contract Amendment will result in an amendment to the Project Schedule, then the Borrower shall have complied with the requirements of Section 6.15 to the extent applicable; and

(f) if the Borrower delivered a payment or performance bond with respect to the applicable Key Construction and Design Contract, then, if requested by the Construction Consultant, the Borrower shall deliver a consent to such Material Construction Contract Amendment from the surety under such bond. Construction Contract Amendments which are not Material Construction Contract Amendments shall not require compliance with the requirements set forth in this Section 6.2 or the approval of the Administrative Agent or any other Person to be effective. However, for the avoidance of doubt, nothing in this Section 6.2 shall relieve the Borrower from complying with the other provisions of this Agreement or the provisions of the Loan Agreement.

6.3 Construction Contracts Entered into after the Closing Date. The Borrower may, from time to time after the Closing Date, enter into Construction Contracts consistent with the Final Plans and Specifications and the Building Budget (as each is in effect from time to time). Each such Construction Contract shall be in writing. The Borrower shall not enter into or permit any other Loan Party to enter into, a new Key Construction and Design Contract (including, without limitation, the EV Contracts) unless and until:

6.3.1 the Borrower and all applicable Contractors party to such Key Construction and Design Contract have executed and delivered the Key Construction and Design Contract (with the effectiveness thereof subject only to satisfaction of the conditions in Sections 6.3.2, 6.3.3, 6.3.4 and 6.3.5);

6.3.2 the Borrower has submitted to the Collateral Agent and the Administrative Agent each of the following, in each case, with a copy to the Disbursement Agent and the Construction Consultant, and, in each case, in form and substance reasonably satisfactory (including in respect of bonding and other support required under such Key Construction and Design Contract) to each of them:

(a) duly completed and executed copies of such Key Construction and Design Contract, together with an Officer's Certificate in substantially the form of Exhibit H (an "**Additional Construction Contract Certificate**") and all exhibits, attachments and certificates required thereby;

(b) copies of all performance and payment bonds (with original bonds delivered to the Collateral Agent) as any Contractor party to such Key Construction and Design Contract may be required to provide to the Borrower pursuant to such Key Construction and Design Contract or as otherwise required pursuant to Section 4.1.2(b) (which performance and payment bonds shall be in form and substance reasonably satisfactory to

Administrative Agent and otherwise commercially reasonable, and shall name the Collateral Agent as a co-obligee or beneficiary, as applicable); and

(c) duly executed consents to collateral assignment (each, a "**Consent**") from each counterparty, substantially in the form of Exhibit F, with such modifications thereto as may be reasonably acceptable to the Administrative Agent, in each case, signed by the counterparty to such Key Construction and Design Contract; *provided, however,* that a Consent shall not be required where (x) the amount to be paid to the Contractor under such Key Construction and Design Contract and all related Construction Contracts with the same Contractor is less than $5,000,000**,** or (y) where the Administrative Agent in its sole discretion has waived such requirement in writing;

6.3.3 if entering into such Key Construction and Design Contract will result in an amendment to the Building Budget, the Borrower (a) shall notify the Construction Consultant, the Disbursement Agent, the Collateral Agent and the Administrative Agent and (b) shall have complied with the requirements of Section 6.1;

6.3.4 if entering into such Key Construction and Design Contract will cause the Project to no longer be In Balance, then the Borrower (a) shall notify the Construction Consultant, the Disbursement Agent and the Administrative Agent; and (b) shall have complied with the requirements of Section 6.4; and

6.3.5 if entering into such Key Construction and Design Contract will result in an amendment to the Project Schedule, the Borrower (a) shall notify the Construction Consultant, the Disbursement Agent and the Administrative Agent, and (b) shall have complied with the requirements of Section 6.15 to the extent applicable.

6.4 In Balance Requirement. If the Project shall, at any time, not be In Balance, the Borrower shall cause either (i) additional Cash equity to be provided to the Borrower, or (ii) Cash proceeds of Subordinated Indebtedness (to the extent permitted under, and subject to the limitations in, the Loan Agreement) to be provided to the Borrower, and, in each case, the Borrower shall deposit (and record as such) such funds into the Building Loan Company Funds Account or, if applicable, the Building Loan Interest Reserve Account in an amount sufficient to cause the Project to be In Balance. Such contributions and deposits may, subject to Section 6.1.1, be made from draws under any Completion Guaranty.

6.5 Building Loan Cost Schedule Certificate. The Borrower shall submit an Officer's Certificate substantially in the form of Exhibit B (a "**Building Loan Cost Schedule Certificate**") to the Collateral Agent, the Administrative Agent, the Disbursement Agent and the Construction Consultant concurrently with the delivery of each report required under Section 6.10. Each Building Loan Cost Schedule Certificate shall include a Building Loan Cost Schedule dated no earlier than the last Business Day of the month immediately preceding the month in which such Building Loan Cost Schedule Certificate is delivered, shall be delivered

simultaneously with the delivery of the Project Cost Schedule Certificate pursuant to Section 6.5 of the Project Disbursement Agreement, and shall set forth:

(a) for each Line Item in the Building Budget, each of the items required on Exhibit B;

(b) (i) the actual investment income earned on the Building Loan Company Funds Account, the Building Loan Proceeds Account, and, until the Interest Reserve Date, the Building Loan Interest Reserve Account, through a date no earlier than thirty (30) days prior to the date of the Building Loan Cost Schedule, (ii) the additional amount of investment income which the Borrower reasonably anticipates will accrue on the Building Loan Company Funds Account and the Building Loan Proceeds Account from such date through the date that the Borrower reasonably anticipates that the Completion Date will occur, and (iii) the additional amount of investment income which the Borrower reasonably anticipates will accrue on the Building Loan Interest Reserve Account from such date through the Interest Reserve Date;

(c) the then-applicable BLDA Share, BLDA Bond Amount Share (including any changes thereto arising from application of Section 6.11 of the Project Disbursement Agreement) and Construction Balancing Cash (which, for the avoidance of doubt, shall equal the amount therefor as designated in the then-applicable Project Cost Schedule under and as defined in the Project Disbursement Agreement); and

(d) a calculation, certified by the Borrower, of the Remaining Costs with respect to each Line Item in the Building Budget, and the Available Construction Funds as of such date. In addition, the Borrower shall, from time to time, deliver to the Administrative Agent and the Construction Consultant any back-up or supporting documentation or other information with respect to the items on the Building Loan Cost Schedule as may be reasonably requested by any of them.

6.6 Final Plans and Specifications; Scope Changes. The Borrower shall not construct or permit to be constructed any material portion of the Project except in substantial conformity with the Final Plans and Specifications for such portion of the Project. The Borrower shall use commercially reasonable efforts to cause the Plans and Specifications to become the Final Plans and Specifications as soon as reasonably practicable.

The Borrower shall not direct, consent to or enter into any Scope Change if such Scope Change, in the reasonable judgment of the Construction Consultant (based on its experience, familiarity and review of the Project and the representations and certifications provided by the Borrower, the Architect, the Construction Manager, the EV Contractor and the EV Architect, as applicable):

(a) will increase the total amount of Building Loan Costs, unless the Borrower complies with the requirements of Section 6.4 and/or amends the Building Budget as provided in Section 6.1 so that, after giving effect to the proposed Scope Change, the Project shall be In Balance;

(b) could reasonably be expected to delay the Casino Opening Date beyond the then-applicable Scheduled Casino Opening Date, or the Completion Date beyond the then-applicable Scheduled Completion Date;

(c) is not consistent with constructing the Project to include the Minimum Facilities, or

(d) will materially modify the Final Plans and Specifications (or cause any Plans and Specifications to become Final Plans and Specifications), unless such Final Plans and Specifications, as amended (or any Plans and Specifications which will become Final Plans and Specifications), have been delivered to the Construction Consultant, together with a Final Plans and Specifications Amendment Certificate substantially in the form of Exhibit G delivered to the Administrative Agent, with a copy to the Disbursement Agent and the Construction Consultant; *provided, however,* that the foregoing provisions of clause (d) of this Section 6.6 shall only apply to Scope Changes if the aggregate amount of all Scope Changes hereunder totals $2,500,000 or more after giving effect to the contemplated Scope Change. The Borrower shall provide a complete set of Final Plans and Specifications, as then in effect, to the Construction Consultant upon request.

6.7 Notice that Project is Operating. Promptly after (but in any event within ten (10) Business Days after) the Casino Opening Date, the Borrower shall deliver an Officer's Certificate substantially in the form of Exhibit E-1 to the Disbursement Agent, the Administrative Agent, the Collateral Agent and the Construction Consultant to the effect that the conditions to the Casino Opening Date (as set forth in the definition thereof) have been satisfied and that the Project is operating, together with a certificate from the Construction Consultant substantially in the form of Exhibit 1 to Exhibit E-1. The parties hereto acknowledge and agree that the Casino may be open for business prior to the opening of the Hotel.

6.8 Application of Insurance, Condemnation and Other Recovery Event Proceeds. In the event of any damage, destruction, taking or breach of an obligation under any document or contract resulting in a Recovery Event with respect to the Project, the Borrower shall (a) promptly upon discovery or receipt of notice thereof provide written notice thereof to the Disbursement Agent, the Collateral Agent, the Administrative Agent, and (b) diligently pursue on a commercially reasonable basis all its rights to compensation against all relevant insurers, reinsurers, counterparties and/or any Governmental Authority, as applicable, in respect of such event to the extent that the Borrower has a reasonable basis for a claim for compensation or reimbursement (that in the Borrower's reasonable opinion is collectible), including under any insurance policy required to be maintained hereunder or under the Loan Documents. The Borrower shall cause all Restoration Proceeds received prior to the Completion Date to be paid by the insurers, reinsurers, counterparties, any Governmental Authority or other payors directly to the Disbursement Agent for deposit in the Building Loan Company Funds Account (or in the Project Company Funds Account under and as defined in the Project Disbursement Agreement, as reasonably determined by the Borrower with the prior consent of the Administrative Agent in consultation with the Construction Consultant, such consent not to be unreasonably withheld or delayed); *provided, however,* that with the prior consent of the Administrative Agent in consultation with the Construction Consultant, Restoration Proceeds in an amount not to exceed $2,500,000 may be deposited into the Building Loan Disbursement Account and/or the Project Disbursement Account under and as defined in the Project Disbursement Agreement if such amount is sufficient to restore the loss or damage to the Project. If any such Restoration Proceeds are paid directly to the Borrower, any Affiliate of the Borrower, the Collateral Agent, or the Administrative Agent, (i) such Restoration Proceeds shall be received in trust for the Disbursement Agent, (ii) such Restoration Proceeds shall be segregated

from other funds of the Borrower or such other Person, and (iii) the Borrower or such other Person shall deposit (or, if applicable, the Borrower shall cause such of its Affiliates to deposit) such Restoration Proceeds in the Building Loan Company Funds Account (or in the Project Company Funds Account under and as defined in the Project Disbursement Agreement, as reasonably determined by the Borrower with the prior consent of the Administrative Agent, in consultation with the Construction Consultant, such consent not to be unreasonably withheld or delayed). Any such Restoration Proceeds deposited into the Building Loan Company Funds Account and/or Building Loan Disbursement Account shall be applied (x) to the extent permitted hereunder, to pay Building Loan Costs pursuant to the requirements of Section 4, or (y) to the extent required under the Loan Agreement, to prepay the Obligations. Notwithstanding the foregoing, the application of Restoration Proceeds hereunder shall be subject to the terms of the Ground Lease, so long as an Event of Default hereunder shall not have occurred and be continuing.

6.9 Diligent Construction of the Project. The Borrower shall take or cause to be taken all action, make or cause to be made all contracts and do or cause to be done all things, in each case, necessary to construct the Project diligently in accordance with the Final Plans and Specifications and the Construction Contracts.

6.10 Reports. Prior to achieving Final Completion, the Borrower shall deliver to the Administrative Agent, the Construction Consultant and the Disbursement Agent, within thirty (30) days after the end of each month: (a) a monthly status report describing in reasonable detail the progress of the construction of the Project since the immediately preceding status report hereunder, including the cost incurred to the end of such month, an estimate of the time and cost required to complete the Project, and such other information which the Administrative Agent, the Construction Consultant or the Disbursement Agent may reasonably request; and (b) all written progress reports, if any, provided by each Contractor directly to the Borrower pursuant to a Key Construction and Design Contract.

6.11 Notices. Promptly, but in any event within 10 Business Days upon acquiring or giving notice or obtaining knowledge thereof, the Borrower shall provide to the Disbursement Agent, the Construction Consultant, the Collateral Agent and the Administrative Agent written notice of:

(a) any event, occurrence or circumstance which could reasonably be expected to cause the Project to not be In Balance or which could render the Borrower incapable of, or prevent the Borrower from (i) achieving the Casino Opening Date on or before the Scheduled Casino Opening Date or the Completion Date on or before the Scheduled Completion Date, or (ii) meeting any material obligation under the Key Construction and Design Contracts as and when required thereunder;

(b) any termination or event of default or notice thereof under any Key Construction and Design Contract, other than terminations of Key Construction and Design Contracts in the ordinary course due to completion of the work thereunder;

(c) any notice of any schedule delay (including for a Force Majeure Event) delivered under the Construction Management Agreement or EV Construction Contract and all remedial plans and updates thereof;

(d) "Substantial Completion" or "Final Completion" (or comparable) certificates or notices thereof delivered under any Key Construction and Design Contract; and

(e) any matter that would require the delivery by the Borrower of an amended building loan agreement and Section 22 Lien Law Affidavit pursuant to Section 6.1.4.

6.12 New Permits and Permit Modifications. Promptly, and in any event within ten (10) Business Days after receipt thereof, the Borrower shall deliver to the Collateral Agent, the Administrative Agent, the Construction Consultant and the Disbursement Agent copies of all material Applicable Permits (and, upon the request of the Collateral Agent, Administrative Agent, Disbursement Agent or Construction Consultant, shall deliver copies of any other Applicable Permits) that are obtained by the Borrower or any other Loan Party after the Closing Date, and any amendment, supplement or other modification to any material Applicable Permit received by the Borrower or any Loan Party after the Closing Date.

6.13 Retainage Amounts. The Borrower shall, and shall cause the Construction Manager (and the EV Contractor, as the case may be) to, withhold as Retainage Amounts from each Contractor Subject to Retainage an amount (a) not less than ten percent (10%) of each payment made to such Contractor Subject to Retainage pursuant to its respective Construction Contract, until such time as the applicable Contractor Subject to Retainage shall have completed fifty percent (50%) of the work under its respective contract; (b) thereafter, not less than five percent (5%) of each payment made to such Contractor Subject to Retainage pursuant to its respective Construction Contract, until such time as the applicable Contractor Subject to Retainage shall have substantially completed all of its work under its respective contract; and (c) thereafter, not less than two and a half percent (2.5%) of each payment made to such Contractor Subject to Retainage pursuant to its respective Construction Contract, until such time as the applicable Contractor Subject to Retainage shall have finally completed all of its work under its respective contract; and (d) not less than one hundred percent (100%) of the amount of defective or incomplete work, as and to the extent permitted pursuant to the terms of the applicable Construction Contract or under applicable law.

6.14 Utility Easement Modifications. The Borrower shall diligently cause all utility or other easements, if any, that would materially interfere with the construction or maintenance of the improvements within the Project to be removed as expeditiously as possible. Notwithstanding the foregoing, the Borrower shall remove such easements before they interfere in any material respect with the prosecution, in accordance with the Project Schedule, of the work involved with the Project, and in any event, prior to the Casino Opening Date.

6.15 Project Schedule Amendments. The Borrower may, from time to time, amend the Project Schedule; *provided, however,* that any such amendment that has the effect of extending the Scheduled Casino Opening Date or the Scheduled Completion Date shall be subject to the following:

6.15.1 *Scheduled Casino Opening Date Extension.* The Borrower may, from time to time, amend the Project Schedule to extend the Scheduled Casino Opening Date, as follows:

a. The parties acknowledge that as of the Closing Date, the Scheduled Casino Opening Date and the Casino Opening Deadline are both March 1, 2018. Accordingly, any extension of the Scheduled Casino Opening Date under this Section 6.15 shall result in a simultaneous, day-for-day extension of the Casino Opening Deadline, such that the two dates shall at all times remain the same;

b. In no event shall the Scheduled Casino Opening Date (and, correspondingly, the Casino Opening Deadline) be extended beyond September 1, 2018;

c. Borrower shall deliver to the Disbursement Agent, the Construction Consultant and the Administrative Agent a revised Project Schedule reflecting the new Scheduled Casino Opening Date;

d. Borrower shall have caused additional Cash equity to be deposited into the Building Loan Company Funds Account, the Project Company Funds Account and/or the Building Loan Interest Reserve Account to the extent required (and in an amount sufficient for) the Project to be In Balance, and shall have amended the Building Budget in accordance with Section 6.1 hereof and the Project Budget in accordance with Section 6.1 of the Project Disbursement Agreement, in each case with respect to the changes in each such budget that will result from the extension of the Scheduled Casino Opening Date and Casino Opening Deadline hereunder; *provided however,* that for the purpose of satisfying clause (b) of the definition of "In Balance" hereunder, the proceeds of:

(i) Realized Savings hereunder;

(ii) Project Budget Realized Savings;

(iii) Contingency Transfers utilizing amounts in respect of the "**Flex Contingency**" Line Item under the Project Disbursement Agreement; and

(iv) Interest Reserve Contingency Transfers, up to the Interest Reserve Contingency Transfer Limit;

may be deposited into the Building Loan Interest Reserve Account pursuant to (x) an amendment of the Building Budget hereunder, (y) a corresponding amendment to the Project Budget pursuant to Section 6.1 of the Project Disbursement Agreement (in the case of utilization of Project Budget Realized Savings, Contingency Transfers utilizing amounts in respect of the "**Flex Contingency**" Line Item under the Project Disbursement Agreement, or Interest Reserve Contingency Transfers**),** and (z) a written request for such transfer from Borrower to Disbursement Agent accompanied with a certification that no Default or Event of Default has occurred and is continuing (or will result from such

transfer), and that the Project will otherwise be In Balance (as defined herein and in the Project Disbursement Agreement) before and after giving effect to such transfer); and

e. Borrower shall have provided the Disbursement Agent and the Administrative Agent with evidence reasonably satisfactory to them that the Gaming Authorities have approved a corresponding extension of the Casino Opening Date under the Gaming License Conditions.

6.15.2 *Scheduled Completion Date Extension.* The Borrower may, from time to time, amend the Project Schedule to extend the Scheduled Completion Date (but in no event beyond the Outside Completion Deadline), by delivering to the Disbursement Agent, the Construction Consultant and the Administrative Agent a revised Project Schedule reflecting the new Scheduled Completion Date, and complying with the provisions of Section 6.1 hereof (and Section 6.1 of the Project Disbursement Agreement) with respect to the changes in the Building Budget (and Project Budget, respectively) that will result from the extension of the Scheduled Completion Date. including the requirement that the Project be In Balance. In the event that such extension of the Scheduled Completion Date requires an extension of the Scheduled Casino Opening Date, then Borrower shall also comply with the provisions of Section 6.15.1 above. For the avoidance of doubt, any extension of the Casino Opening Deadline and the Scheduled Completion Date in accordance with this Section 6.15 shall not modify any of Borrower's obligations under this Agreement or under all applicable terms and provisions of the Loan Agreement pertaining to any such extension.

6.16 Lien Law. The Borrower covenants that any amounts disbursed from the Building Loan Proceeds Account shall be used for only the purposes of paying Costs of Improvement and in accordance with the Section 22 Lien Law Affidavit.

6.17 Trust Fund. The Borrower shall receive all disbursements of proceeds of the Loans and hold the right to receive all such disbursements as a trust fund in accordance with the provisions of Section 13 of the Lien Law to be applied first for the purpose of paying the Costs of Improvement incurred by the Borrower, and shall apply all such disbursements first to the payment of the Costs of Improvement incurred by the Borrower before using any part of the disbursements for any other purpose. Nothing herein shall impose upon the Disbursement Agent, the Collateral Agent, the Administrative Agent or the other Secured Parties any obligation to see to the proper application of such amounts by the Borrower. The proceeds of the Loans shall be used solely for the payment of Costs of Improvement in accordance with the Lien Law of the State of New York.

7. Events of Default. Upon the occurrence of any of the following specified events (each, an "**Event of Default**"):

(a) the occurrence and continuation of an "Event of Default" under the Loan Agreement or any other Loan Document;

(b) the failure, from time to time, of the Project to be In Balance, which failure shall continue for thirty (30) consecutive days without being cured;

(c) any representation, warranty or certification made by the Borrower or any other Loan Party in this Agreement, any Disbursement Request or any other certificate submitted pursuant hereto shall be found to have been incorrect in any material respect when made or deemed to be made; *provided, however*, that if a representation and warranty contains a materiality or Material Adverse Effect qualification, the materiality qualifier in this Section 7(c) shall be disregarded for purposes of such representation and warranty;

(d) the Borrower shall fail to perform or observe any of its obligations under Section 6.1.4;

(e) the Borrower shall fail to perform or observe any of its obligations hereunder (other than those listed in clauses (a), (b), (c) or (d) above) where such Default shall not have been remedied within thirty (30) days after the earlier of (i) the Borrower or any other Loan Party becoming aware of such breach or Default, or (ii) notice of such failure from the Disbursement Agent, the Collateral Agent or the Administrative Agent to the Borrower;

(f) the Borrower or any Loan Party shall breach or default under any material term, condition, provision, covenant, representation or warranty contained in any Key Construction and Design Contract and such breach or default shall continue unremedied for fifteen (15) days after the earlier of (i) the Borrower or any other Loan Party becoming aware thereof; or (ii) receipt by the Borrower or any other Loan Party of notice thereof from the Disbursement Agent, the Collateral Agent or the Administrative Agent; *provided, however*, that so long as (x) such breach or default could not reasonably be expected to result in a Material Adverse Effect; and (y) such breach or default is reasonably susceptible to cure within a further forty-five (45) days but cannot be cured within such original fifteen (15) day period despite the Borrower's good faith and diligent efforts to do so, then the cure period shall be extended as is reasonably necessary beyond such original fifteen (15) day period (but such extension shall in no event be longer than forty-five (45) additional days) if remedial action reasonably likely to result in cure is promptly instituted within such original fifteen (15) day period and is continued until the breach or default is remedied;

(g) any party (other than the Borrower or any other Loan Party) shall breach or default under any material term, condition, provision, covenant, representation or warranty contained in any Key Construction and Design Contract to which any Loan Party is a party and such breach or default shall continue unremedied for thirty (30) days after the earlier of (i) the Borrower or any other Loan Party becoming aware thereof, or (ii) receipt by the Borrower or any other Loan Party of notice thereof from the Collateral Agent, the Administrative Agent or the Disbursement Agent; *provided, however,* that:

(A) if such breach or default is reasonably susceptible to cure within seventy-five (75) days but cannot be cured within such original thirty (30) days despite such other party's good faith and diligent efforts to do so, the cure period shall be extended as is reasonably necessary beyond such original thirty (30) day period (but shall in no event be longer than seventy-five (75) days) and only if remedial action reasonably likely to result in cure is promptly instituted within such original thirty (30) day period and is thereafter diligently pursued until the breach or default is remedied; and

(B) no Event of Default shall be deemed to have occurred as a result of such breach or default if the Borrower provides written notice to the Collateral Agent, the Administrative Agent and the Disbursement Agent promptly upon (but in no event more than two (2), Business Days after) the Borrower or any other Loan Party becoming aware thereof that the Borrower intends to replace such Key Construction and Design Contract (or that replacement is not necessary); and

(1) the Borrower obtains a replacement obligor or obligors reasonably acceptable to the Administrative Agent (in consultation with the Construction Consultant) for the affected party (if in the reasonable judgment of the Disbursement Agent or the Administrative Agent (in consultation with the Construction Consultant) a replacement is necessary);

(1) the Borrower enters into a replacement Key Construction and Design Contract in accordance with Section 6.3 on terms no less beneficial to the Borrower and the Secured Parties in any material respect than the Key Construction and Design Contract so breached (or otherwise reasonably satisfactory to the Disbursement Agent and the Administrative Agent) within seventy-five (75) days of such breach (if in the reasonable judgment of the Administrative Agent (in consultation with the Construction Consultant) a replacement is necessary and the applicable counterparty has not theretofore cured its breach); *provided, further, however,* that the replacement Key Construction and Design Contract may require the Borrower to pay amounts to the replacement obligor in excess of those that would otherwise have been payable under the breached Key Construction and Design Contract if such additional payments in the reasonable judgment of the Administrative Agent, in consultation with the Construction Consultant, do not cause the Project to fail to be In Balance; and

(3) such breach or default, after considering any replacement obligor and replacement Key Construction and Design Contract and the time required to implement such replacement, has not had and could not reasonably be expected to have a Material Adverse Effect

(h) any of the Key Construction and Design Contracts to which any Loan Party is a party shall have terminated, become invalid or illegal, or otherwise ceased to be in full force and effect (other than in the ordinary course at the end of its stated term); *provided, however,* that (i) with respect to the Construction Management Agreement, the Borrower shall be permitted fifteen (15) Business Days in which to cure such contract termination, invalidity, illegality or cessation, and (ii) with respect to any Key Construction and Design Contract to which any Loan

Party is a party other than the Construction Management Agreement, no Event of Default shall be deemed to have occurred as a result of such termination, invalidity, illegality or cessation if the Borrower provides written notice to the Collateral Agent, the Administrative Agent and the Disbursement Agent promptly upon (but in no event more than two (2) Business Days after) the Borrower or any Loan Party becoming aware of such Key Construction and Design Contract terminating, becoming invalid or illegal, or otherwise ceasing to be in full force or effect, that the Borrower intends to replace such Key Construction and Design Contract (or that replacement is not necessary) and:

(A) the Borrower obtains a replacement obligor or obligors reasonably acceptable to the Administrative Agent, for the affected party (if in the reasonable judgment of the Administrative Agent, in consultation with the Construction Consultant, a replacement is necessary);

(B) the Borrower enters into a replacement Key Construction and Design Contract in accordance with Section 6.3, on terms no less beneficial to the Borrower and the Secured Parties in any material respect than the Key Construction and Design Contract so terminated, invalidated, deemed illegal or ceased (or otherwise as reasonably satisfactory to the Disbursement Agent and the Administrative Agent), within sixty (60) days of such termination, invalidity, illegality or cessation (if in the reasonable judgment of the Administrative Agent, in consultation with the Construction Consultant, a replacement is necessary); *provided, however*, that the replacement Key Construction and Design Contract may require the Borrower to pay additional amounts to the replacement obligor that would have otherwise been payable under the terminated Key Construction and Design Contract if such additional payments in the reasonable judgment of the Administrative Agent, in consultation with the Construction Consultant, do not cause the Project to fail to be In Balance; and

(C) such termination, invalidity, illegality or cessation, after considering any replacement obligor and replacement Key Construction and Design Contract and the time required to implement such replacement, has not had and could not reasonably be expected to have a Material Adverse Effect.

(i) the Borrower shall abandon the Project or, for a consecutive period in excess of ten (10) days (excluding for purposes hereof the period during which a Force Majeure Event has occurred and is continuing, provided that the Borrower has provided notice thereof to the Administrative Agent, the Disbursement Agent and the Construction Consultant and such other information as any such party may reasonably request), otherwise cease to pursue the construction, development or operations of the Project;

(j) the Construction Consultant shall at any time reasonably determine (based on its experience, familiarity and review of the Project and information and schedules provided by the Borrower and the Contractors) that either the Casino Opening Date is likely to occur later than

seventy-five (75) days after the Scheduled Casino Opening Date, or that the Completion Date is likely to occur later than seventy-five (75) days after the Scheduled Completion Date, which Default shall not have been remedied, whether by amendment to the Scheduled Casino Opening Date or Scheduled Completion Date in accordance with Section 6.15 or otherwise, within thirty (30) days of notice of such determination by the Construction Consultant; or

(k) failure to achieve the Casino Opening Date on or before the Scheduled Casino Opening Date or the Completion Date on or before the Scheduled Completion Date (as the same may have been extended pursuant to Section 6.15).

and during the continuance of an Event of Default, the Collateral Agent, the Administrative Agent or the Disbursement Agent may, without further notice of default, presentment or demand for payment, protest or notice of non-payment or dishonor, or other notices or demands of any kind, all such notices and demands being waived (to the extent permitted by applicable law), exercise any or all rights and remedies at law or in equity (in any combination or order that such Persons may elect, subject to the foregoing), including without limitation or prejudice to such Person's other rights and remedies, (x) subject to the terms and provisions of Section 3.2, refuse, and such Persons shall not be obligated, to make or cause to be made any Disbursements or make or cause to be made any payments from any Account or other funds (whether or not held by the Disbursement Agent by or on behalf of the Borrower), and (y) exercise any and all rights and remedies available under any of the Loan Documents.

8. Limitation of Liability.

(a) The Disbursement Agent's responsibility and liability under this Agreement shall be limited as follows:

(i) the Disbursement Agent does not represent, warrant or guaranty to the Collateral Agent, the Administrative Agent or the Lenders the performance of the Borrower, the Construction Consultant, the Architect, any Contractor or provider of materials or services in connection with construction of the Project;

(ii) the Disbursement Agent shall have no responsibility to the Borrower, the Collateral Agent, the Administrative Agent or the Lenders as a consequence of performance by the Disbursement Agent hereunder except for any bad faith, fraud, gross negligence or willful misconduct of the Disbursement Agent (as determined by a court of competent jurisdiction in a final and nonappealable judgment);

(iii) the Borrower shall remain solely responsible for all aspects of its business and conduct in connection with its property and the Project, including, but not limited to, the quality and suitability of the Plans and Specifications (and Final Plans and Specifications), the supervision of the work of construction, the qualifications, financial condition and performance of all architects, engineers, contractors, subcontractors, suppliers, consultants and property managers, the accuracy of all applications for payment, and the proper application of all Disbursements;

(iv) the Disbursement Agent is not obligated to supervise, inspect or inform the Borrower, the Collateral Agent, the Administrative Agent, the Contractors, the Construction Consultant or any third party of any aspect of the construction of the Project or any other matter referred to above; and

(v) the Disbursement Agent owes no duty of care to the Borrower, the Construction Consultant, any Contractor or any other Person to protect against, or to inform any such party against, any negligent, faulty, inadequate or defective design or construction of the Project.

(b) The Disbursement Agent shall have no duties or obligations hereunder except as expressly set forth herein (including with respect to review of the substantive terms and conditions of any contracts delivered to the Disbursement Agent), shall be responsible only for the performance of such duties and obligations, shall not be required to take any action otherwise than in accordance with the terms hereof, and shall not be in any manner liable or responsible for any loss or damage arising by reason of any act or omission to act by it hereunder or in connection with any of the transactions contemplated hereby, including, but not limited to, any loss that may occur by reason of forgery, false representations or any other reason, except for its own bad faith, fraud, gross negligence or willful misconduct (as determined by a court of competent jurisdiction in a final and nonappealable judgment). The Disbursement Agent shall be deemed to have satisfied its obligations to make or cause to be made any Disbursement required hereunder upon the delivery of the applicable Disbursement Request or other written instruction, duly acknowledged by the Disbursement Agent, to the applicable securities intermediary or account bank under the applicable Control Agreement in respect of the applicable Account or Accounts from which such Disbursement is to be made, and the Borrower hereby constitutes and appoints the Disbursement Agent its true and lawful attorney-in-fact to give such instructions, and this power of attorney shall be deemed to be a power coupled with an interest and shall be irrevocable.

(c) The Disbursement Agent shall have no liability for the failure of any such securities intermediary or account bank (including but not limited to any Account Bank) to comply with any Disbursement Request or other written instructions. Copies of any Building Budget Amendment Certificate, Contract Amendment Certificate, Final Plans and Specifications Amendment Certificate or Additional Construction Contract Certificate that are provided to the Disbursement Agent pursuant to this Agreement or otherwise shall not be construed as requiring the Disbursement Agent's approval of, nor shall the Disbursement Agent be liable or in any way responsible for, the Building Budget, Construction Contract or Final Plans and Specifications associated therewith. In addition, the Disbursement Agent shall have no responsibility to inquire into or determine the genuineness, authenticity, or sufficiency of any certificates, documents or instruments submitted to it in connection with its duties hereunder, and shall be entitled to deem the signatures on any such certificates, documents or instruments submitted to it hereunder as being those purported to be authorized to sign such certificates, documents or instruments on behalf of the parties hereto, and shall be entitled to rely upon the genuineness of the signatures of such signatories without inquiry and without requiring substantiating evidence of any kind. To the extent permitted by applicable law, the Borrower shall not assert, and hereby waives, any claim against the Disbursement Agent, the Collateral Agent and the Administrative Agent (and each of their affiliates, and each of their and their affiliates' officers, directors, agents and employees) for special, indirect, consequential or

punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement or any agreement, instrument or transaction contemplated hereby. In taking or omitting to take any action hereunder, the Disbursement Agent shall be entitled to rely on the advice or statement of counsel (including statements of counsel to the Borrower) and shall incur no liability in following such advice or statement. The Disbursement Agent agrees to engage the Construction Consultant for the purpose of taking the actions to be taken under this Agreement by the Construction Consultant. The Construction Consultant shall be required to act reasonably and in good faith in making determinations and carrying out its duties, rights and responsibilities hereunder. In addition, the parties hereto agree that the Collateral Agent shall not incur any liability from its acts or omissions hereunder, and the Collateral Agent is hereby released from any such liability, except to the extent such liability results from the fraud, bad faith, gross negligence or willful misconduct of the Collateral Agent (as determined by a court of competent jurisdiction in a final and nonappealable judgment).

9. Indemnity; Protections and Immunities.

(a) The Borrower shall indemnify, hold harmless and defend the Disbursement Agent and its affiliates and its and its affiliates' officers, directors, agents and employees (collectively, the "**Indemnitees**") from and against any and all claims, actions, obligations, liabilities and expenses, including defense costs, investigative fees and costs, reasonable legal fees (limited to not more than one primary counsel, one local counsel, and one gaming counsel, and excluding the cost of in-house counsel), and claims for damages, arising from the Disbursement Agent's performance under this Agreement (but specifically excluding any claims for special, indirect, consequential or punitive damages) except to the extent that such liability, expense, action, obligation or claim is attributable to the bad faith, fraud, gross negligence or willful misconduct of an Indemnitee (as determined by a court of competent jurisdiction in a final and non-appealable judgment). In addition, the Borrower agrees to indemnify the Disbursement Agent as an "Agent" in accordance with Section 9.05 of the Loan Agreement, and hereby agrees that the Disbursement Agent shall be deemed an "Agent" and entitled to each of the benefits and remedies of an "Agent" under such Section, which is hereby incorporated by reference. The foregoing indemnities in this Section 9 shall survive the resignation or substitution of the Disbursement Agent or the termination of this Agreement. The Borrower shall indemnify, hold harmless and defend the Disbursement Agent, the Collateral Agent, the Administrative Agent and the other Secured Parties, and their respective affiliates and their respective affiliates' officers, directors, agents and employees from and against any proceedings that any person institutes against the Borrower, the Disbursement Agent, the Collateral Agent, the Administrative Agent, and/or the other Secured Parties alleging a violation of the Lien Law and/or Section 22 Lien Law Affidavit, except to the extent such failure to file was the result of the bad faith, fraud, gross negligence or willful misconduct of the Disbursement Agent, the Collateral Agent, the Administrative Agent or the other Secured Parties(as determined by a court of competent jurisdiction in a final and non-appealable judgment). The indemnity and other obligations of the Borrower under this Section 9 shall not apply with respect to Taxes, other than any Taxes that represent losses, claims, damages, etc. arising from any non-Tax claim.

(b) The Administrative Agent is executing this Agreement solely as administrative agent under the Loan Agreement. All rights, privileges, protections and immunities in favor thereof under the Loan Documents are incorporated herein by reference, unless such rights, privileges, protections and immunities are specifically set forth herein. The Administrative Agent shall have no liability relating to any action or inaction of the Disbursement Agent, the Borrower, the Collateral Agent or any other party pursuant to this Agreement. The Collateral Agent is executing this Agreement solely as collateral agent. All rights, privileges, protections and immunities in favor thereof under the Loan Agreement are incorporated herein by reference, unless such rights, privileges, protections and immunities are specifically set forth herein. The Collateral Agent shall have no liability relating to any action or inaction of the Administrative Agent, the Disbursement Agent, the Borrower, or any other party pursuant to this Agreement.

10. Termination.

This Agreement shall terminate upon the earlier of (a) "payment in full" of all Obligations in accordance with the terms of the Loan Agreement; and (b) the time when (i) every Account hereunder has been closed in accordance with Section 4.6, and (ii) every "Account" (as defined in the Project Disbursement Agreement) has been closed in accordance with the terms thereof; *provided, however*, that the obligations of the Borrower under Section 9 of this Agreement shall survive termination of this Agreement. For the avoidance of doubt, upon the termination of this Agreement as set forth above, the Accounts shall no longer be required to be subject to a Control Agreement.

11. Substitution or Resignation of the Disbursement Agent.

11.1 Procedure. A resignation or removal of the Disbursement Agent and appointment of a successor Disbursement Agent shall become effective as provided in this Section 11.

11.1.1 The Disbursement Agent may resign in writing at any time and be discharged from all duties hereunder upon thirty (30) days' written notice to all parties hereto. Such resignation shall become effective on the date specified in such notice regardless of whether a replacement Disbursement Agent has been appointed at such time. The Administrative Agent may remove the Disbursement Agent as provided below by so notifying the Disbursement Agent and the Borrower in writing no less than fifteen (15) days prior to such removal, if:

(a) the Disbursement Agent is adjudged by a court of competent jurisdiction to be bankrupt or insolvent or an order for relief is entered by such court with respect to the Disbursement Agent under any Debtor Relief Law;

(b) a custodian or receiver takes charge of the Disbursement Agent or its property; or

(c) the Disbursement Agent becomes incapable of acting in its capacity as disbursement agent hereunder, in the sole judgment of the Administrative Agent.

11.1.2 If the Disbursement Agent resigns or is removed or if a vacancy exists in the office of Disbursement Agent for any reason, the successor Disbursement Agent shall be appointed in accordance with Section 8.08 of the Loan Agreement (and the Administrative Agent shall use commercially reasonable efforts to cause such appointment unless a successor Disbursement Agent has already been appointed pursuant to a court in accordance with Section 11.1.3). Any such successor Disbursement Agent shall, so long as no Default or Event of Default has occurred and is continuing, be reasonably acceptable to the Borrower (such acceptance not to be unreasonably withheld or delayed).

11.1.3 If a successor Disbursement Agent does not take office within thirty (30) days after the retiring Disbursement Agent resigns or is removed, then the retiring Disbursement Agent, the Administrative Agent or the Borrower may petition any court of competent jurisdiction for the appointment of a successor Disbursement Agent; *provided* that until a successor Disbursement Agent has been so appointed, the Collateral Agent shall act as the Disbursement Agent hereunder.

11.1.4 A successor Disbursement Agent shall deliver a written acceptance of its appointment to the retiring Disbursement Agent (if applicable), the Borrower, the Collateral Agent and the Administrative Agent, and upon the later of (a) delivery of such written acceptance and (b) the effective date of the resignation or removal of the prior Disbursement Agent pursuant to Section 11.1.1, such successor Disbursement Agent shall have all the rights, powers and duties of the Disbursement Agent under this Agreement. Any resigned or removed Disbursement Agent shall promptly transfer all nonproprietary documents held by it in its capacity as Disbursement Agent and necessary for the transitioning of its duties to any successor Disbursement Agent.

11.2 Successor Disbursement Agent by Merger, etc. If the Disbursement Agent consolidates, merges or converts into, or transfers all or substantially all of its corporate trust business to, another entity, then the successor entity, without any further act, shall be the successor Disbursement Agent.

11.3 No Consent of Borrower. Subject to Section 11.1, the Borrower acknowledges and agrees that the Administrative Agent shall have the right (but not the obligation) to change the party acting as the "Disbursement Agent" pursuant to and in accordance with the terms of this Agreement without the consent of the Borrower, and the Administrative Agent agrees to provide written notice to the Borrower of any such change.

11.4 Eligibility; Disqualification. The Borrower shall ensure that each Account Bank with respect to the Accounts is at all times a bank chartered under the laws of the United States of America or of any state thereof that is authorized under such laws to exercise corporate trust and banking power, that is subject to supervision or examination by federal or state authorities and that has a combined capital and surplus of at least $500,000,000 as set forth in its most recent published annual report of condition; *provided*, *however*, that, if any Account Bank at any time fails to meet such qualifications, such failure shall not constitute a Default so long as the Borrower promptly replaces such Account Bank in accordance with Section 12.17.

12. Miscellaneous.

12.1 Delay and Waiver. No delay or omission to exercise any right, power or remedy accruing upon the occurrence of any Default, Event of Default or any other breach or default by the Borrower under this Agreement shall impair any such right, power or remedy of the Disbursement Agent, the Collateral Agent, the Administrative Agent or any Lender nor shall it be construed to be a waiver of any such Default, Event of Default, breach or default, or an acquiescence therein, or in any similar Default, Event of Default, breach or default thereafter occurring, nor shall any waiver of any single Default, Event of Default or other breach or default be deemed a waiver of any other Default, Event of Default or other breach or default theretofore or thereafter occurring. Any waiver, permit, consent or approval of any kind or character on the part of any of the Disbursement Agent, the Collateral Agent, the Administrative Agent or any Lender of any Default, Event of Default or other breach or default under this Agreement, or any waiver on the part of any of the Disbursement Agent, the Collateral Agent, the Administrative Agent or any Lender of any provision or condition of this Agreement, must be in writing and shall be effective only to the extent in such writing specifically set forth and any such waiver shall not constitute a continuing waiver of similar or other Defaults, Events of Default, breaches or defaults, nor shall any such waiver constitute a waiver by any other party with respect to such breach or default. All remedies under this Agreement or by law or otherwise afforded to any of the Disbursement Agent, the Collateral Agent, the Administrative Agent or any Lender shall be cumulative and not alternative.

12.2 Invalidity. In case any provision of this Agreement shall be invalid, illegal or unenforceable in any jurisdiction, such provision shall, as to such jurisdiction, be ineffective to the extent of such invalidity, illegality or unenforceability without affecting or impairing the validity, legality or enforceability of any other provisions hereof, and to the extent possible, such invalid, illegal or unenforceable provision shall be deemed replaced by a provision that is valid and enforceable and that comes closest to expressing the intention of such invalid or unenforceable term, and any such invalidity, illegality or unenforceability in any jurisdiction shall not invalidate or render illegal or unenforceable such provision in any other jurisdiction.

12.3 No Authority. The Disbursement Agent shall not have any authority to, and shall not make any warranty or representation or incur any obligation on behalf of, or in the name of, the Collateral Agent, the Administrative Agent or any of the Lenders.

12.4 Assignment. Subject to Section 11 hereof and Section 8.08 of the Loan Agreement, this Agreement is personal to the parties hereto, and the rights and duties of any party hereunder shall not be assignable except with the prior written consent of the other parties. In any event, this Agreement shall inure to and be binding upon the parties and their successors and permitted assigns.

12.5 Benefit. The parties hereto and their respective successors and assigns, but no others, shall be bound hereby and entitled to the benefits hereof.

12.6 Time. Time is of the essence of each provision of this Agreement.

12.7 [Intentionally Omitted.]

12.8 Entire Agreement; Amendments. This Agreement (together with the other Loan Documents) contains the entire agreement among the parties hereto with respect to the subject matter hereof and supersedes any and all prior agreements, understandings and commitments, whether oral or written. This Agreement may be amended only by a writing signed by duly authorized representatives of all of the parties hereto.

12.9 Notices. All notices, requests and demands to or upon the respective parties hereto or the Construction Consultant to be effective shall be in writing (including by facsimile), and, unless otherwise expressly provided herein, shall be deemed to have been duly given or made when delivered, or the next Business Day after being deposited with an overnight delivery service, or, in the case of facsimile notice, when received, addressed as follows or to such other address as the applicable parties may hereafter notify to the other parties:

Borrower:	Montreign Operating Company, LLC 204 Route 17B Monticello, NY 12701 Attention: Chief Executive Officer Facsimile: (845) 807-0000 Telephone: (845) 807-0001
With a copy to:	Paul Weiss, Rifkind, Wharton & Garrison LLP 1285 Avenue of the Americas New York New York 10019 6064 Attention: Harris B. Freidus Facsimile: (212) 373-0064 Email: hfreidus@paulweiss.com
Administrative Agent:	Credit Suisse AG, Cayman Islands Branch Eleven Madison Avenue New York, New York 10010 Attention: Sean Portrait – Agency Manager Facsimile: (212) 322-2291 Email: agency.loanops@credit-suisse.com
Disbursement Agent:	Credit Suisse AG, Cayman Islands Branch Eleven Madison Avenue New York, New York 10010 Attention: Sean Portrait – Agency Manager, Shawan Fox Facsimile: (212) 322-2291 Email: agency.loanops@credit-suisse.com shawan.fox@credit-suisse.com

Collateral Agent:	Credit Suisse AG, Cayman Islands Branch Eleven Madison Avenue, 2nd Floor New York, New York 10010 Attention: Loan Operations – Boutique Management Facsimile: (212) 538-6106 Email: list-ops-collateral@credit-suisse.com
in the case of the Administrative Agent, the Collateral Agent or the Disbursement Agent, with a copy to:	Latham & Watkins LLP 12670 High Bluff Drive San Diego, CA 92130 Attention: Brett Rosenblatt, Esq. Facsimile: (858) 523-5401 Telephone: (858) 523-5450
Construction Consultant:	CBRE, Inc., d/b/a Inspection & Valuation International 55 West Red Oak Lane White Plains, New York 10604 Attention: Paul DeMicco Facsimile: (914) 694-4007 Telephone: (914) 694-1900

Notwithstanding anything to the contrary contained herein, any deliveries of Plans and Specifications, warranty documentation, Construction Contracts or other documentation required to be delivered to any Person hereunder in order to satisfy the conditions to Completion, Final Completion or the Casino Opening Date (other than the delivery of any certificates required thereunder) may be delivered in digital format or portable document format (PDF) by electronic mail to such Person.

12.10 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. Delivery of an executed signature page of this Agreement or any certificate or affidavit required hereunder by facsimile or portable document format (PDF) shall be as effective as a manually signed counterpart to this Agreement or such certificate or affidavit.

12.11 Right to Consult Counsel. Each of the Disbursement Agent, the Collateral Agent and the Administrative Agent may, if any of them deems necessary or appropriate, consult with and be advised by counsel (whether such counsel shall be regularly retained or specifically employed) in respect of their duties hereunder. Each of the Disbursement Agent, the Collateral Agent and the Administrative Agent shall be entitled to reasonably rely upon the advice of its counsel in any action taken in its capacity as the Disbursement Agent, the Collateral Agent or the Administrative Agent, as the case may be, hereunder and shall be protected from any liability of any kind for actions taken in reasonable reliance upon such opinion of its counsel. The Borrower agrees to pay all such reasonable, documented counsel fees actually incurred (limited to not more than one primary counsel, one local counsel and one gaming counsel, and excluding the cost of in-

house counsel and any fees incurred as a result of the bad faith, fraud, gross negligence or willful misconduct of any Indemnitee as determined in a final and unappealable determination of a court of competent jurisdiction), and such payment shall not be unreasonably delayed.

12.12 Choice of Law. THIS AGREEMENT SHALL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAWS OF THE STATE OF NEW YORK (WITHOUT REGARD TO CONFLICT OF LAWS PROVISIONS THAT WOULD RESULT IN THE APPLICATION OF LAWS OTHER THAN THE LAW OF THE STATE OF NEW YORK).

12.13 Consent to Jurisdiction.

12.13.1 The Borrower hereby irrevocably and unconditionally submits, for itself and its property, to the nonexclusive jurisdiction of any New York State court or Federal court of the United States of America sitting in New York City, Borough of Manhattan, and any appellate court from any thereof, in any action or proceeding arising out of or relating to this Agreement or the other Loan Documents, or for recognition or enforcement of any judgment, and each of the parties hereto hereby irrevocably and unconditionally agrees that all claims in respect of any such action or proceeding may be heard and determined in such New York State court or, to the extent permitted by law, in such Federal court. Each of the parties hereto agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Nothing in this Agreement shall affect any right that the Collateral Agent, the Disbursement Agent, the Administrative Agent or any Lender may otherwise have to bring any action or proceeding relating to this Agreement or the other Loan Documents against the Borrower or its properties in the courts of any jurisdiction.

12.13.2 The Borrower hereby irrevocably and unconditionally waives, to the fullest extent it may legally and effectively do so, any objection which it may now or hereafter have to the laying of venue of any suit, action or proceeding arising out of or relating to this Agreement or the other Loan Documents in any New York State or Federal court. Each of the parties hereto hereby irrevocably waives, to the fullest extent permitted by law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court.

12.13.3 Each party to this Agreement irrevocably consents to service of process in the manner provided for notices in Section 12.9. Nothing in this Agreement will affect the right of any party to this Agreement to serve process in any other manner permitted by law.

12.14 Further Assurances. From time to time, the Borrower shall execute and deliver, or cause to be executed and delivered, such additional instruments, certificates or documents, and take all such actions, as the Disbursement Agent, the Collateral Agent or the Administrative Agent may reasonably request for the purposes of implementing or effectuating the provisions of this Agreement. Upon the exercise by the Disbursement Agent, the Collateral Agent or the Administrative Agent of any power, right, privilege or remedy pursuant to this Agreement which requires any Governmental Action, the Borrower shall use commercially reasonable efforts to execute and deliver, or will cause the execution and delivery of, all applications, certifications,

instruments and other documents and papers that the Disbursement Agent, the Collateral Agent or the Administrative Agent may reasonably request in connection with such Governmental Action.

12.15 Reinstatement. This Agreement shall continue to be effective or be reinstated, as the case may be, if at any time payment and performance of any of the Borrower's obligations hereunder, or any part thereof, is, pursuant to applicable law, rescinded or reduced in amount, or must otherwise be restored or returned by the Disbursement Agent, the Collateral Agent, the Administrative Agent or any Lender. In the event that any payment or any part thereof is so rescinded, reduced, restored or returned, such obligations shall be reinstated and deemed reduced only by such amount paid and not so rescinded, reduced, restored or returned.

12.16 WAIVER OF JURY TRIAL. EACH PARTY HERETO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ANY OF THE OTHER LOAN DOCUMENTS. EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS, AS APPLICABLE, BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 12.16.

12.17 Substitution of Account Bank for Accounts. Upon thirty (30) days' prior written notice to the Collateral Agent, the Disbursement Agent and the Administrative Agent, the Borrower shall have the right to substitute the Account Bank with respect to any Account with another bank satisfying the eligibility requirements set forth in Section 11.4 and otherwise reasonably satisfactory to the Administrative Agent and the Disbursement Agent so long as (a) all funds on deposit in the account held by such replaced Account Bank are moved to the newly opened account at the replacement bank, (b) the Borrower grants Liens over the newly opened account to the Collateral Agent (on behalf of the Administrative Agent and the Lenders), and (c) the replacement bank enters into control agreements substantially in the form of the control agreements to which the Collateral Agent is then a party with regard to the applicable Accounts being so moved (or otherwise in form and substance reasonably satisfactory to the Collateral Agent (on behalf of the Administrative Agent and the Lenders)). Subject to the foregoing, Administrative Agent and Disbursement Agent hereby approve each of Wells Fargo Bank, N.A., Fifth Third Bank and KeyBank National Association as an acceptable substitute Account Bank with regard to any Account; *provided, however,* that at any time there shall be no more than two different Account Banks with regard to all Accounts hereunder and under the Project Disbursement Agreement. Upon any substitution of the Account Bank with respect to any Account in accordance with this Section 12.17, the Collateral Agent and/or the Administrative Agent, as applicable, shall promptly deliver such notices to the applicable Account Bank that has been replaced that are reasonably necessary to close the applicable Accounts therewith and terminate the applicable Control Agreements pertaining thereto.

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IN WITNESS WHEREOF, the parties hereto have each caused this Building Loan Disbursement Agreement to be duly executed by their duly authorized officers, all as of the day and year first above written.

CREDIT SUISSE AG, CAYMAN ISLANDS BRANCH,
as the Disbursement Agent

By:	/s/ Robert Hetu
Name:	Robert Hetu
Title:	Authorized Signatory

By:	/s/ Whitney Gaston
Name:	Whitney Gaston
Title:	Authorized Signatory

CREDIT SUISSE AG, CAYMAN ISLANDS BRANCH,
as the Administrative Agent

By:	/s/ Robert Hetu
Name:	Robert Hetu
Title:	Authorized Signatory

By:	/s/ Whitney Gaston
Name:	Whitney Gaston
Title:	Authorized Signatory

CREDIT SUISSE AG, CAYMAN ISLANDS BRANCH,
as the Collateral Agent

By:	/s/ Robert Hetu
Name:	Robert Hetu
Title:	Authorized Signatory

By:	/s/ Whitney Gaston
Name:	Whitney Gaston
Title:	Authorized Signatory

EXHIBIT N-68

MONTREIGN OPERATING COMPANY, LLC,
as the Borrower

By: /s/ Joseph A. D'Amato
Name: Joseph A. D'Amato
Title: President

EMPIRE RESORTS REAL ESTATE II, LLC,
as the EV Subsidiary

By: /s/ Joseph A. D'Amato
Name: Joseph A. D'Amato
Title: President

EXHIBIT N-69

EXHIBIT 10.52

EXECUTION VERSION

$15,000,000

REVOLVING CREDIT AGREEMENT

among

MONTREIGN OPERATING COMPANY, LLC,
as Borrower

and

THE LENDERS PARTY HERETO,
as Lenders

and

FIFTH THIRD BANK,
as Administrative Agent

dated as of January 24, 2017

****

FIFTH THIRD BANK,
as Joint Lead Arranger and Joint Book Runner

NOMURA SECURITIES INTERNATIONAL, INC.,
as Joint Lead Arranger and Joint Book Runner

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Appendices, Exhibits and Schedules

This REVOLVING CREDIT AGREEMENT, dated as of January 24, 2017 (this "Agreement"), is entered into among MONTREIGN OPERATING COMPANY, LLC a New York limited liability company (the "Borrower"), the banks, financial institutions and other entities from time to time party to this Agreement as lenders (each, individually, a "Lender" and collectively, the "Lenders"), and FIFTH THIRD BANK, as administrative agent (in such capacity, together with its successors and assigns in such capacity, the "Administrative Agent").

RECITALS

The Borrower, together with the other Loan Parties, owns or intends to develop, construct, own and operate a casino and hotel resort, entertainment village and golf course, including restaurants and related facilities and amenities (including all buildings, structures and improvements related thereto, all fixtures, attachments, appliances, equipment, machinery and other articles attached thereto or used in connection therewith and all alterations thereto or replacements thereof, the "Project") to be located in Sullivan County, New York. Capitalized terms used but not otherwise defined in these Recitals shall have the meanings given thereto in Section 1.01.

The Borrower desires that the Lenders extend the senior secured credit facility contemplated hereby, the proceeds of which will be used, among other things, for working capital and general corporate purposes of the Loan Parties, all as further specified herein.

AGREEMENT

In consideration of the agreements set forth herein and in the other Loan Documents and in reliance upon the representations and warranties set forth herein and therein, the parties hereto hereby agree as follows:

Article I.

DEFINITIONS

Section 1.01. Defined Terms. As used in this Agreement, the following terms shall have the meanings specified below:

"ABR", when used in reference to any Loan, refers to whether such Loan is bearing interest at a rate determined by reference to the Alternate Base Rate.

"Additional Capital Expenditures Amount" shall have the meaning given in Section 6.08(c).

"Adelaar Developer" shall mean Adelaar Developer, LLC, a Delaware limited liability company.

"Adjusted LIBO Rate" shall mean, with respect to any LIBOR Loan (or any determination made under clause (c) of the definition of Alternate Base Rate) for any Interest Period, an interest rate per annum equal to the product of (i) the LIBO Rate in effect for such Interest Period and (ii) Statutory Reserves; provided that the Adjusted LIBO Rate shall not be less than 0.00%.

"Administrative Agent" shall have the meaning given in the preamble to this Agreement.

"Administrative Questionnaire" shall mean an Administrative Questionnaire substantially in the form of Exhibit O or such other form as shall be approved by the Administrative Agent.

"Affected Lender" shall have the meaning given in Section 2.17(b).

"Affected Loans" shall have the meaning given in Section 2.17(b).

"Affiliate" shall mean, when used with respect to a specified Person, another Person that directly, or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with the Person specified; provided, however, that, other than when used with respect to a Lender, an Approved Fund, an Agent or a Lead Arranger (including any Eligible Assignee of a Lender), the term "Affiliate" shall also include any Person that directly or indirectly owns 10% or more of any class of Capital Stock in the Person specified or that is an officer or director of the Person specified.

"Agents" shall mean the Administrative Agent and the Collateral Agent.

"Aggregate Amounts Due" shall have the meaning given in Section 2.16.

"Aggregate Exposure" shall mean, with respect to any Lender at any time, the amount of such Lender's Commitment

or, if the Commitments have then expired or been terminated, the Loan Exposure of such Lender.

"Agreement" shall have the meaning given in the preamble to this Agreement.

"Alternate Base Rate" shall mean, for any day, a rate per annum equal to the greatest of (a) the Prime Rate in effect on such day, (b) the Federal Funds Effective Rate in effect on such day plus 1/2 of 1% and (c) except during any period of time during which a notice delivered to the Borrower under Section 2.17(a) or Section 2.17(b) shall remain in effect, the Adjusted LIBO Rate for a one month Interest Period on such day (or if such day is not a Business Day, the immediately preceding Business Day) plus 1.00%; provided that the Alternate Base Rate shall not be less than 0.00%; provided further that for the purpose of preceding clause (c), the Adjusted LIBO Rate for any day shall be based on the LIBO Rate for a one month Interest Period determined by the Administrative Agent on such day at approximately 11:00 a.m. (London time). If the Administrative Agent shall have determined (which determination shall be conclusive absent manifest error) that it is unable to ascertain the Federal Funds Effective Rate for any reason, the Alternate Base Rate shall be determined without regard to clause (b) of the preceding sentence until the circumstances giving rise to such inability no longer exist. Any change in the Alternate Base Rate due to a change in the Prime Rate, the Federal Funds Effective Rate or the Adjusted LIBO Rate shall be effective on the effective date of such change in the Prime Rate, the Federal Funds Effective Rate or the Adjusted LIBO Rate, as the case may be.

"Anti-Corruption Laws" shall mean all laws, rules and regulations of any jurisdiction applicable to the Borrower or any of its Subsidiaries or Unrestricted Subsidiaries from time to time concerning or relating to bribery or corruption, including the United States Foreign Corrupt Practices Act of 1977, as amended, and other similar legislation in any other jurisdictions.

"Anti-Terrorism Laws" shall mean all laws, rules and regulations relating to terrorism or money laundering, including Executive Order No. 13224, the Patriot Act, The Currency and Foreign Transactions Reporting Act (also known as the "Bank Secrecy Act," 31 U.S.C. §§ 5311-5330 and 12 U.S.C. §§ 1818(s), 1820(b) and 1951-1959), and the laws, regulations and executive orders administered by the United States Treasury Department's Office of Foreign Assets Control (as any of the foregoing laws may from time to time be amended, renewed, extended, or replaced).

"Applicable Margin" shall mean, for any day, (a) for LIBOR Loans, 5.00% per annum and (b) for ABR Loans, 4.00% per annum.

"Approved Fund" shall mean any Fund that is administered, advised or managed by (a) a Lender, (b) an Affiliate of a Lender or (c) an entity (including an investment advisor) or an Affiliate of any entity that administers, advises or manages a Lender.

"Asset Sale" shall mean the sale, lease, sublease, exchange, sale and leaseback, assignment, conveyance, transfer, grant of restriction, issuance or other disposition (by way of merger, casualty, condemnation or otherwise) by the Borrower or any other Loan Party to any Person other than a Loan Party of (a) any Capital Stock in any Subsidiary of the Borrower (other than directors' qualifying shares) or (b) any other assets of the Borrower or any other Loan Party, including Capital Stock in any Person that is not a Subsidiary of the Borrower (other than (i) inventory, goods, obsolete, surplus or worn out assets (including the abandonment or other disposition of Intellectual Property that is, in the reasonable judgment of the Borrower, no longer

economically practicable to maintain or useful in the conduct of the business of the Borrower and the other Loan Parties), scrap and Cash (including amounts paid out as patron winnings) or Cash Equivalents, in each case disposed of in the ordinary course of business; (ii) the making of any Investment or Restricted Junior Payment permitted by this Agreement; (iii) the disposition of assets as a result of a Recovery Event (without giving effect to the proviso contained in the definition thereof); (iv) a substantially contemporaneous exchange or trade-in of equipment or inventory by the Borrower or any other Loan Party for other equipment or inventory so long as the Borrower or such other Loan Party effecting such exchange or trade-in receives at least substantially equivalent value in exchange or as trade-in for the property so disposed of; (v) the issuance by the Borrower of any Capital Stock; (vi) the incurrence of Permitted Liens; (vii) leases, subleases and licenses (including pursuant to the IDA Documents and with respect to trademarks, tradenames and other intellectual property and, in each case, including any amendments, modifications or supplements thereto), in each case in the ordinary course of business and in no event relating to gaming equipment or gaming operations; (viii) the disposition of assets in connection with the incurrence of Capital Lease Obligations and purchase money Indebtedness permitted pursuant to Section 6.01(j) with respect to such assets, (ix) the sale or other disposition of gaming machines in the ordinary course of business, and (x) the issuance or sale of Capital Stock in an Unrestricted Subsidiary); provided that asset sales described in clause (b) above having a value not in excess of $2,000,000 in the aggregate in any Fiscal Year shall be deemed not to be an "Asset Sale" for purposes of this Agreement.

"Assignee" shall have the meaning given in Section 9.04(c).

"Assignment and Acceptance" shall mean an assignment and acceptance entered into by a Lender and an assignee (with the consent of any Person whose consent is required by Section 9.04(c)), and accepted by the Administrative Agent substantially in the form of Exhibit G, or such other form as shall be approved by the Administrative Agent and the Borrower (such approval not to be unreasonably withheld, conditioned or delayed). To the extent approved by the Administrative Agent, an Assignment and Acceptance may be electronically executed and delivered to the Administrative Agent via an electronic settlement system then acceptable to the Administrative Agent.

"Assignment of Leases and Rents" shall mean (a) the Absolute Assignment of Leases, Rents and Income, substantially in the form of Exhibit C-6, effective as of the date hereof, executed and delivered by the Borrower, Empire Sub I and the IDA in favor of the Collateral Agent for the benefit of the Secured Parties, (b) the Absolute Assignment of Leases, Rents and Income, substantially in the form of Exhibit C-6, effective as of the date hereof, executed and delivered by Empire Sub II in favor of the Collateral Agent for the benefit of the Secured Parties and (c) each other assignment of leases and rents executed and delivered by a Loan Party in favor of the Collateral Agent for the benefit of the Secured Parties from time to time, in each case, in form and substance reasonably satisfactory to the Administrative Agent.

"Assignor" shall have the meaning given in Section 9.04(c).

"Authorized Officer" shall mean, as applied to any Person, any individual holding the position of chairman of the board (if an officer), chief executive officer, president or one of its

vice presidents (or the equivalent thereof), such Person's chief financial officer or treasurer or any other authorized representative of such Person reasonably satisfactory to the Administrative Agent.

"Available Amount" shall mean, on any date, an amount equal to (a) $2,500,000; *plus*; (b) the cumulative amount (which shall not be less than zero) of Consolidated Excess Cash Flow for the period commencing on the first day of the first full Fiscal Quarter occurring after the Full Opening Date through the last day of the Fiscal Year most recently ended; *plus* (c) the cumulative amount of Cash and Cash Equivalents proceeds received after the Full Opening Date and on or prior to such date from any equity issuance by, or capital contribution to the Borrower (other than Disqualified Capital Stock, Specified Equity Contributions, payments made under the Completion Guaranty (as defined in the Term Loan Agreement), Permitted Equity Contributions, amounts required to be contributed pursuant to either Disbursement Agreement, Required Equity Contributions, amounts applied to Project Costs and, without duplication, other amounts previously applied for purposes other than use in the Available Amount); *plus* (d) to the extent not already included in Consolidated Net Income and not otherwise utilized to replenish Investment capacity under Section 6.07 the aggregate the amount actually received by the Borrower or any Subsidiary Guarantor in Cash or Cash Equivalents after the Full Opening Date from any dividend or other distribution by an Unrestricted Subsidiary; *plus* (e) to the extent not already included in Consolidated Net Income an amount equal to any returns (including dividends, interest, distributions, returns of principal, profits on sale, repayments, income and similar amounts) actually received in Cash or Cash Equivalents by the Borrower or any Subsidiary Guarantor in respect of any Investments made pursuant to Section 6.07(m) so long as such amounts do not exceed the Investments made pursuant to Section 6.07(m); *plus* (f) to the extent not already included in Consolidated Net Income and not otherwise utilized to replenish Investment capacity under Section 6.07 the aggregate amount actually received in Cash or Cash Equivalents by the Borrower or any Subsidiary Guarantor in connection with the sale, transfer or other disposition of its ownership interest in any Unrestricted Subsidiary or joint venture (other than to the Borrower or any Subsidiary of the Borrower) that is not a Subsidiary Guarantor, in each case, to the extent of the Investment in such joint venture or Unrestricted Subsidiary; *minus* (g) the aggregate amount of Consolidated Excess Cash Flow that was required to be applied to the repayment of Loans pursuant to Section 2.13(c) or Term Loans pursuant to Section 2.13(c) of the Term Loan Agreement *minus* (h) without duplication, the aggregate principal amount of voluntary repayments of Loans, Term Loans and the Regulatory Cash Amount applied to reduce the amount of the repayment of Loans pursuant to Section 2.13(c) or Term Loans pursuant to Section 2.13(c) of the Term Loan Agreement, in each case as a result of the operation of clauses (B) and (C) of such applicable Section 2.13(c); *minus* (i) the aggregate amount of any (i) Restricted Junior Payments made pursuant to Section 6.05(e), (ii) Investments made pursuant to Section 6.07(m), and (iii) Capital Expenditures made pursuant to Section 6.08(c)(vi), in each case, made since the Closing Date and on or prior to such date; provided, that in no event shall any Consolidated Excess Cash Flow for any Fiscal Year be included in the Available Amount until after the date financial statements and the related Compliance Certificate are delivered pursuant to Section 5.01(c) and Section 5.01(d) for such Fiscal year and the payment required to be made pursuant to Section 2.13(c) (or Section 2.13(c) of the Term Loan Agreement, as applicable) has been made in respect of such Fiscal Year.

"Bail-In Action" shall mean the exercise of any Write-Down and Conversion Powers by the applicable EEA Resolution Authority in respect of any liability of an EEA Financial Institution.

"Bail-In Legislation" shall mean, with respect to any EEA Member Country implementing Article 55 of Directive 2014/59/EU of the European Parliament and of the Council of the European Union, the implementing law for such EEA Member Country from time to time which is described in the EU Bail-In Legislation Schedule.

"Bankruptcy Code" shall mean Title 11 of the United States Code entitled "Bankruptcy", as now and hereafter in effect, or any successor statute.

"Benefit Plan" shall mean any employee pension benefit plan (other than a Multiemployer Plan) subject to the provisions of Title IV of ERISA or Section 412 of the Tax Code, and in respect of which any Loan Party or any ERISA Affiliate is (or, if such plan were terminated, would under Section 4069 of ERISA be deemed to be) an "employer" as defined in Section 3(5) of ERISA.

"Blocked Person" shall have the meaning given in Section 3.30(b).

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

"Borrower" shall have the meaning given in the preamble to this Agreement.

"Borrowing" shall mean Loans of the same Type made, converted or continued on the same date and, in the case of LIBOR Loans, as to which a single Interest Period is in effect.

"Breakage Event" shall have the meaning given in Section 2.17(c).

"Building Loan Disbursement Agreement" shall have the meaning given in the Term Loan Agreement.

"Business Day" shall mean any day (other than a Saturday or Sunday) on which banks are not authorized or required to close in Cincinnati, Ohio and, if the applicable Business Day relates to the advances or continuation of, or conversion into, or payment of a LIBOR Loan, on which banks are dealing in U.S. Dollar deposits in the interbank eurodollar market, in London, England; provided that, notwithstanding anything to the contrary in this definition of "Business Day", at any time during which a Hedging Agreement with Fifth Third Bank or any of its Affiliates is then in effect with respect to all or a portion of the Obligations, then the definitions of "Business Day" pursuant to such Hedging Agreement shall govern with respect to all applicable notices and determinations in connection with such portion of the Obligations subject to such Hedging Agreement.

"Capital Lease Obligations" shall mean, as to any Person, the obligations of such Person to pay rent or other amounts under any lease of (or other arrangement conveying the right to use) real or personal property, or a combination thereof, which obligations are required to be

classified and accounted for as capital leases on a balance sheet of such Person under GAAP and in accordance with the last sentence of Section 1.04, and the amount of such obligations at any time shall be the capitalized amount thereof at such time determined in accordance with GAAP.

"Capital Stock" shall mean any and all shares, interests, participations or other equivalents (however designated) of capital stock in a corporation, any and all classes of membership interests in a limited liability company, any and all classes of partnership interests in a partnership, any and all equivalent ownership interests in a Person and any and all warrants, rights or options to purchase any of the foregoing.

"Carryover Amount" shall have the meaning given in Section 6.08(c).

"Cash" shall mean money, currency or a credit balance in any demand deposit account, in each case in Dollars.

"Cash Collateralize" shall mean to pledge and deposit with or deliver to the Administrative Agent, for the benefit of the Issuing Bank or Lenders, as collateral for Letter of Credit Obligations or obligations of Lenders to fund participations in respect of Letter of Credit Obligations, cash or deposit account balances or, if the Administrative Agent and the Issuing Bank shall agree in their sole discretion, other credit support, in each case pursuant to documentation in form and substance reasonably satisfactory to the Administrative Agent and the Issuing Bank; provided that if such pledge and deposit is made pursuant to Section 2.22 by reason of an Issuing Bank's being a Terminated Lender thereunder, the collateral so pledged and deposited shall be for the sole benefit of such Issuing Bank that is a Terminated Lender and not of any successor or other Issuing Bank. "Cash Collateral" shall have a meaning correlative to the foregoing and shall include the proceeds of such cash collateral and other credit support.

"Cash Equivalents" shall mean, as at any date of determination, (a) marketable securities (i) issued or directly and unconditionally guaranteed as to interest and principal by the United States of America or (ii) issued by any agency of the United States of America, the obligations of which are backed by the full faith and credit of the United States of America, in each case maturing within one year after such date; (b) marketable direct obligations issued by any state of the United States of America or any political subdivision of any such state or any public instrumentality thereof or the District of Columbia, in each case maturing within one year after such date and having, at the time of the acquisition thereof, a rating of at least A-1 from S&P or at least P-1 from Moody's; (c) commercial paper maturing no more than one year from the date of creation thereof and having, at the time of the acquisition thereof, a rating of at least A-1 from S&P or at least P-1 from Moody's; (d) time deposit accounts, money market deposits, certificates of deposit or bankers' acceptances maturing within one year after such date and issued or accepted by a commercial bank that is (i) a Lender or (ii) (A) organized under the laws of the United States of America or any state thereof or the District of Columbia or that is the principal banking Subsidiary of a bank holding company organized under the laws of the United States of America or any state thereof or the District of Columbia, and is a member of the Federal Reserve System and (B) has combined capital and surplus of at least $250,000,000; (e) repurchase obligations with a term of not more than 30 days for underlying securities of the types described in clause (a) above entered into with a bank meeting the qualifications described in clause (d) above; and (f) shares of any money market mutual fund

(i) that has substantially all of its assets invested continuously in the types of investments referred to above or (ii) that complies with the criteria set forth in Rule 2a-7 under the Investment Company Act of 1940 and are rated AA+ by S&P and A-1 by Moody's.

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

"Casino Opening Date" shall have the meaning given to the term in the Building Loan Disbursement Agreement.

"Change in Control" shall mean that (a) except as permitted by Section 6.10, the Borrower shall at any time fail to directly or indirectly own, beneficially and of record on a fully diluted basis, 100% of each class of issued and outstanding Capital Stock in each Subsidiary Guarantor, (b) the Equity Pledgor shall at any time fail to directly own, beneficially and of record on a fully diluted basis, 100% of each class of issued and outstanding Capital Stock in the Borrower, (c) any Person or "group" (within the meaning of Rules 13d-3 and 13d-5 under the Securities and Exchange Act of 1934, as amended) other than any combination of the Permitted Holders shall own directly or indirectly, beneficially and of record on a fully diluted basis, a percentage of aggregate voting interests (including the voting power in an election of directors (or managers or the general partner or similar governing body)) in the Borrower greater than the percentage thereof owned directly or indirectly beneficially and of record on a fully diluted basis, collectively by the Permitted Holders at such time, or (d) any "Change in Control" (as defined in the Term Loan Agreement) shall occur.

"Change in Law" shall mean the occurrence, after the date of this Agreement, of any of the following: (a) the adoption or taking effect of any law, rule, regulation or treaty, (b) any change in any law, rule, regulation or treaty or in the administration, interpretation, implementation or application thereof by any Governmental Authority or (c) the making or issuance of any request, rule, guideline or directive (whether or not having the force of law) by any Governmental Authority; provided that, notwithstanding anything herein to the contrary, (x) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith and (y) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or United States or foreign regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to be a "Change in Law", regardless of the date enacted, adopted or issued.

"Charges" shall have the meaning given in Section 9.09.

"Closing Certificate" shall mean a certificate substantially in the form of Exhibit J.

"Closing Date" shall mean the date of this Agreement.

"Closing Date Equity Contribution" shall have the meaning given in the Term Loan Agreement.

"Collateral" shall mean all present and future Capital Stock in the Borrower (including all Pledged Collateral) and Property of the Loan Parties, now owned or hereafter acquired, upon which a Lien is purported to be created by any Security Document, and shall include the Mortgaged Properties (it being understood that the Collateral shall not include any Excluded Collateral).

"Collateral Account Control Agreement" shall mean the Collateral Account Control Agreement, substantially in the form of Exhibit C-4, dated as of the date hereof, among the Borrower, the Collateral Agent, the Term Loan Collateral Agent, the Disbursement Agent (as defined in the Term Loan Agreement) and the securities intermediary thereunder.

"Collateral Agent" shall mean Fifth Third Bank, in its capacity as collateral agent for the benefit of the Secured Parties, together with its permitted successors and assigns.

"Commitment" shall mean the commitment of a Lender to make or otherwise fund any Loan and to acquire participations in Letters of Credit hereunder, and "Commitments" shall mean such commitments of all Lenders in the aggregate. The amount of each Lender's Commitment is set forth on the Lender Addendum delivered by such Lender and/or in any Assignment and Acceptance to which such Lender assumed any Commitments, subject to any adjustment or reduction pursuant to the terms and conditions hereof. The aggregate amount of the Commitments as of the Closing Date is $15,000,000.

"Commitment Period" shall mean the period from the Closing Date to but excluding the Commitment Termination Date.

"Commitment Termination Date" shall mean the earliest to occur of (a) the Scheduled Maturity Date, (b) the date the Commitments are permanently reduced to zero pursuant to Sections 2.12(b), and (c) the date of the termination of the Commitments pursuant to Section 7.01.

"Companies" shall mean (a) the Equity Pledgor and (b) the Loan Parties.

"Company Funds Account" shall mean the "Building Loan Company Funds Account" (as defined in the Building Loan Disbursement Agreement) and/or the "Project Company Funds Account" (as defined in the Project Disbursement Agreement), as applicable.

"Completion" shall have the meaning given in the Building Loan Disbursement Agreement.

"Completion Date" shall have the meaning given in the Building Loan Disbursement Agreement.

"Compliance Certificate" shall mean a compliance certificate substantially in the form of Exhibit F.

"Consent" shall mean any of the consents to collateral assignment delivered pursuant Section 4.01(y).

"Consolidated Adjusted EBITDA" shall mean, for any period, Consolidated Net Income of the Borrower and its Subsidiaries for such period plus (a) without duplication and, other than in the case of clause (a)(vii) below, to the extent deducted in determining such Consolidated Net Income, the sum of, without duplication, (i) Consolidated Interest Expense for such period, (ii) consolidated income tax expense (if any) of the Borrower and its Subsidiaries for such period and, without duplication, any distributions made or expected to be made within the following twelve months pursuant to Section 6.05(b) with respect to such period, (iii) all amounts attributable to depreciation and amortization with respect to such period (including (A) goodwill impairment, (B) accelerated depreciation calculated in accordance with GAAP, (C) amortization of capitalized interest, (D) amortization of licensing fees, (E) amortization of deferred financing fees, and (F) amortization of original issue discount with respect to the Loans), (iv) any non-Cash charges (other than any non-Cash charge representing amortization of a prepaid Cash item that was paid and not expensed in a prior period (provided, for purposes of clarification, the foregoing shall not include writeoffs of unamortized capitalized fees)) for such period (including purchase accounting adjustments and writeoffs of unamortized fees, costs and expenses); provided that if any of the non-Cash charges referred to in this clause (iv) represents an accrual or reserve for potential Cash items in any future period, (1) the Borrower may determine not to add back such non-cash charge in the current period and (2) to the extent the Borrower does decide to add back such non-cash charge, the cash payment in respect thereof in such future period shall be subtracted from Consolidated Adjusted EBITDA in such future period to the extent paid in accordance with clause (b)(i) below, (v) any unusual or nonrecurring losses and expenses, (vi) all transaction fees, charges and other amounts related to the Transactions occurring on or about the Closing Date (including any financing fees, legal fees and expenses, due diligence fees or any other fees and expenses in connection therewith), (vii) to the extent not considered "income" of the Borrower for purposes of Consolidated Net Income for such period, business interruption insurance proceeds received in cash during such period, (viii) pre-opening and development expenses in connection with (x) the Project or (y) any development, expansion or new amenity at the Project, (ix) all expenses and charges which (A) are reimbursed to a Loan Party in cash by an indemnitee or insurance or otherwise paid for by a Person that is not an Affiliate of a Loan Party (to the extent such cash reimbursement or payment is not otherwise considered "income" of the Borrower and its Subsidiaries for purposes of Consolidated Net Income for such period) or (B) in the reasonable good faith determination of the Borrower, will be so reimbursed in cash within 365 days of the date of such determination (for purposes of clarification, if such amounts are reimbursed in cash within 365 days of such determination, such amounts shall not at such time of reimbursement be included in the calculation of Consolidated Adjusted EBITDA), (x) any loss attributable to the early extinguishment or termination of Hedging Agreements, (xi) all administrative and collateral agency fees paid in such period with respect to Indebtedness, (xii) rental payments and charges on a GAAP basis with respect to the Ground Lease, the Entertainment Village Lease and the Golf Course Lease for such period, (xiii) costs and charges associated with amendments, modifications or supplements to any agreement relating to the Obligations, the Commitments (as defined in the Term Loan Agreement) or the Term Loans, (xiv) any costs or expense incurred by the Borrower pursuant to any management equity plan or stock option plan or any other management or employee benefit plan or agreement or any stock subscription or shareholder agreement, and (xv) any distributions made pursuant to Section 6.05(c) (provided that, to the extent that all or any portion of the income of any Person is excluded from Consolidated Net Income pursuant to the definition thereof for all or any portion of such period,

any amounts set forth in the preceding clauses (i) through (xv) that are attributable to such Person shall not be included for purposes of this definition for such period or portion thereof), and minus (b) without duplication (i) all Cash payments made during such period on account of reserves, restructuring charges and other non-Cash charges added to Consolidated Net Income pursuant to clause (a)(iv) above in a previous period, (ii) to the extent included in determining such Consolidated Net Income, any interest income and all non-Cash items of income for such period (excluding any such non-Cash item to the extent it represents the reversal of an accrual or reserve for a potential Cash item in any prior period), all determined on a consolidated basis in accordance with GAAP, (iii) to the extent not deducted in determining Consolidated Net Income for such period, amounts distributed in accordance with Section 6.05(c) and Section 6.12(f) for such period, (iv) any income or gain attributable to the early extinguishment or termination of Hedging Agreements, (v) cancellation of Indebtedness income, (vi) actual cash rental payments under the Ground Lease, the Entertainment Village Lease and the Golf Course Lease and (vii) the amount of any expenses and charges added to Consolidated Net Income in a previous period pursuant to clause (a)(ix) above to the extent not reimbursed in cash within 365 days of the date of the reasonable good faith determination by the Borrower that such amounts will be so reimbursed.

"Consolidated Capital Expenditures" shall mean, for any period, the aggregate of all expenditures of the Borrower and its Subsidiaries during such period determined on a consolidated basis that, in accordance with GAAP, are or should be included in "purchase of property and equipment" or similar items reflected in the consolidated statement of cash flows of the Borrower and its Subsidiaries; provided that the amount of (a) any Project Costs, (b) any FF&E Costs (as defined in the Term Loan Agreement) and (c) the payment of licensing or other fees to the Gaming Authorities in an aggregate amount not to exceed $51,000,000 for the issuance of, or application for, the Borrower's Gaming License shall, in each case, be excluded from "Consolidated Capital Expenditures".

"Consolidated Cash Interest Expense" shall mean, for any period, Consolidated Interest Expense, net of interest income, for such period, excluding, without duplication, (a) any amount not paid in Cash during such period and (b) for purposes of the calculation of the Interest Coverage Ratio only, the amortization of debt issuance costs, debt discount or premium and other financing fees, charges and expenses incurred by such Person for such period (including any amounts referred to in Section 2.10 or with respect to letters of credit and banker's acceptance financing).

"Consolidated Current Assets" shall mean, as at any date of determination, the total assets of the Borrower and its Subsidiaries on a consolidated basis that may properly be classified as current assets in conformity with GAAP, excluding Cash and Cash Equivalents.

"Consolidated Current Liabilities" shall mean, as at any date of determination, the total liabilities of the Borrower and its Subsidiaries on a consolidated basis that may properly be classified as current liabilities in conformity with GAAP, excluding (i) the current portion of long term debt and (ii) any payments due to contractors and consultants related to the development of the Project to the extent such payments are to be made in accordance with the Project Budget (as defined in the Term Loan Agreement).

"Consolidated Excess Cash Flow" shall mean, for any period, an amount (if positive) equal to: (a) the sum, without duplication, of the amounts for such period of (i) Consolidated Adjusted EBITDA (excluding any Specified Equity Contribution received by the Borrower), (ii) the Consolidated Working Capital Adjustment, (iii) to the extent received in Cash, interest income (except to the extent attributed to the accounts established under the Disbursement Agreements or otherwise attributable to periods prior to the Full Opening Date), (iv) to the extent received in Cash, any extraordinary income or gains and (v) to the extent received in Cash, income or gain subtracted from Consolidated Net Income in accordance with clause (b)(iv) of the definition of "Consolidated Adjusted EBITDA" minus (b) the sum, without duplication, of the amounts for such period of (i) voluntary and scheduled repayments of Consolidated Total Debt (excluding (x) repayments of Loans except to the extent made with internally generated cash and so long as the Commitments are permanently reduced in connection with (and in aggregate amount equal to) such repayments, (y) the voluntary repayments of Term Loans and (z) all such repayments made with the cash proceeds of Subordinated Indebtedness), (ii) Consolidated Capital Expenditures (net of Consolidated Capital Expenditures made with or otherwise reimbursed from any cash proceeds of (A) any related financings or capital contributions with respect to such expenditures, (B) any sales of assets used to finance such expenditures and (C) any casualty or condemnation, in each case that would not be included in Consolidated Adjusted EBITDA), (iii) Consolidated Cash Interest Expense (less any amounts paid during such period on account of Debt Service from the Interest Reserve Account or that are otherwise attributable to periods prior to the Full Opening Date), (iv) distributions paid or expected to be paid within the following twelve months in cash pursuant to Section 6.05(b) with respect to such period and (without duplication) consolidated income tax expense of the Borrower and its Subsidiaries, if any, paid or expected to be paid within the following twelve months in cash with respect to such period, (v) to the extent paid in Cash, any extraordinary expenses or losses and, to the extent paid in Cash and added to Consolidated Net Income in accordance with clause (a)(v) of the definition of "Consolidated Adjusted EBITDA", any unusual and nonrecurring expenses or losses, (vi) to the extent paid in Cash, expenses and charges that were added to Consolidated Net Income in accordance with clause (a)(vi) of the definition of "Consolidated Adjusted EBITDA", (vii) to the extent paid in Cash, expenses and charges added to Consolidated Net Income in accordance with clauses (a)(viii), (a)(x), (a)(xi), (a)(xiii), (a)(xiv) and (a)(xv) of the definition of "Consolidated Adjusted EBITDA" and (viii) to the extent paid in Cash, Investments made pursuant to Section 6.07(n) (net of the portion of any such Investment made with or otherwise reimbursed from any cash proceeds of (A) any related financings or capital contributions with respect to such Investments, (B) any sales of assets used to finance such Investments, and (C) any casualty or condemnation). Furthermore, any amounts added to Consolidated Net Income in accordance with clause (a)(ix)(B) of the definition of Consolidated Adjusted EBITDA shall be excluded from Consolidated Adjusted EBITDA for purposes of the calculation of Consolidated Excess Cash Flow to the extent reimbursement in cash of such amounts is not received during the relevant period.

"Consolidated Interest Expense" shall mean, for any period, total interest expense (including that portion attributable to Capital Lease Obligations in accordance with GAAP and capitalized interest) of the Borrower and its Subsidiaries on a consolidated basis with respect to all outstanding Indebtedness of the Borrower and its Subsidiaries, including financing fees and the amortization thereof (including debt issuance costs, debt discount or premium and other financing fees, charges and expenses incurred by such Person for such period (including with respect to letters

of credit and banker's acceptance financing)). For purposes of the foregoing, interest expense of any Person shall be determined after giving effect to any net payments made or received by such Person with respect to interest rate Hedging Agreements but shall exclude any non-cash interest expense attributable to the movement of the mark-to-market valuation of obligations in respect of Hedging Agreements or other derivative instruments pursuant to Statement of Financial Accounting Standards No. 133. For the avoidance of doubt, interest income shall not be considered when determining Consolidated Interest Expense.

"Consolidated Net Income" shall mean, for any period, the net income (or loss) of the Borrower and its Subsidiaries on a consolidated basis for such period taken as a single accounting period determined in conformity with GAAP, provided that there shall be excluded, without duplication, (i) the income (or loss) of (x) any Person (other than a Subsidiary of the Borrower) in which any other Person (other than the Borrower or any Subsidiary of the Borrower) has a joint interest or (y) any Person that is an Unrestricted Subsidiary, except (in either case) to the extent of the amount of dividends or other distributions actually paid in Cash to the Borrower or any Subsidiary (other than an Unrestricted Subsidiary) of the Borrower by such Person during such period, (ii) the income (or loss) of any Person accrued prior to the date it becomes a Subsidiary or is merged into or consolidated with the Borrower or any Subsidiary of the Borrower or that Person's assets are acquired by the Borrower or any Subsidiary of the Borrower, (iii) the income of any Subsidiary of the Borrower to the extent that the declaration or payment of dividends or similar distributions by that Subsidiary of that income is not at the time permitted by operation of the terms of its charter or any agreement, instrument, judgment, decree, order, statute, rule or governmental regulation applicable to that Subsidiary, (iv) any after-tax gains or losses attributable to Asset Sales or returned surplus assets of any Benefit Plan, and (v) to the extent not included in clauses (i) through (iv) above, any extraordinary gains or extraordinary losses. In addition, "Consolidated Net Income" shall exclude the cumulative effect of a change in accounting principles during such period.

"Consolidated Total Debt" shall mean, as at any date of determination, the aggregate stated balance sheet amount of all Indebtedness of the type described in clauses (a), (b), (c), (d), (f) (to the extent such letter of credit or similar instrument is drawn and not reimbursed), (i), and (k) (in the case of clause (k), as it applies to each of the foregoing clauses only) of the definition thereof of the Borrower and its Subsidiaries (other than Subordinated Indebtedness) determined on a consolidated basis in accordance with GAAP.

"Consolidated Working Capital" shall mean, as at any date of determination, the excess (or deficit) of Consolidated Current Assets over Consolidated Current Liabilities.

"Consolidated Working Capital Adjustment" shall mean, for any period on a consolidated basis, the amount (which may be a negative number) by which Consolidated Working Capital as of the beginning of such period exceeds (or is less than) Consolidated Working Capital as of the end of such period.

"Construction Budget" shall have the meaning given the Term Loan Agreement.

"Contractual Obligation" shall mean, as applied to any Person, any provision of any Security issued by that Person or of any indenture, mortgage, deed of trust, contract, undertaking,

agreement or other instrument to which that Person is a party or by which it or any of its properties is bound or to which it or any of its properties is subject.

"Control" shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ownership of voting securities, by contract or otherwise, and the terms "Controlling" and "Controlled" shall have meanings correlative thereto.

"Control Agreements" shall mean the Collateral Account Control Agreement, each control agreement entered into in accordance with the Disbursement Agreements or the Pledge and Security Agreement and each other control agreement executed from time to time by any Loan Party in favor of the Collateral Agent for the benefit of the Secured Parties pursuant to any Loan Document.

"Conversion/Continuation Date" shall mean the effective date of a conversion or continuation, as the case may be, as set forth in the applicable Conversion/Continuation Notice.

"Conversion/Continuation Notice" shall mean a Conversion/Continuation Notice substantially in the form of Exhibit B-2.

"Credit Date" shall mean the date of a Credit Extension, which date shall in all cases be a Business Day.

"Credit Event" shall have the meaning given in Section 4.02.

"Credit Extension" shall mean the making of a Loan or the issuance, amendment, extension or renewal of a Letter of Credit.

"Debt Service" shall have the meaning given in the Term Loan Agreement.

"Debtor Relief Laws" shall mean Title 11 of the United States Code entitled "Bankruptcy," or any successor statute, and all other liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors, moratorium, rearrangement, receivership, insolvency, reorganization, or similar debtor relief laws of the United States or other applicable jurisdictions from time to time in effect.

"Default" shall mean any event or condition which constitutes an Event of Default or which upon notice, lapse of time or both (as provided in Section 7.01) would constitute an Event of Default.

"Default Rate" shall have the meaning given in Section 2.09.

"Defaulting Lender" shall mean, subject to Section 2.21(b), any Lender that (a) has failed to (i) fund all or any portion of its Loans within two Business Days of the date such Loans were required to be funded hereunder unless such Lender notifies the Administrative Agent and the Borrower in writing that such failure is the result of such Lender's determination that one or more conditions precedent to funding (each of which conditions precedent, together with any applicable

default, shall be specifically identified in such writing) has not been satisfied, or (ii) pay to the Administrative Agent, the Issuing Bank or any other Lender any other amount required to be paid by it hereunder (including in respect of its participation in Letters of Credit) within two Business Days of the date when due, (b) has notified the Borrower, the Administrative Agent or the Issuing Bank in writing that it does not intend to comply with its funding obligations hereunder, or has made a public statement to that effect (unless such writing or public statement relates to such Lender's obligation to fund a Loan hereunder and states that such position is based on such Lender's determination that a condition precedent to funding (which condition precedent, together with any applicable default, shall be specifically identified in such writing or public statement) cannot be satisfied), (c) has failed, within three Business Days after written request by the Administrative Agent or the Borrower, to confirm in writing to the Administrative Agent and the Borrower that it will comply with its prospective funding obligations hereunder (provided that such Lender shall cease to be a Defaulting Lender pursuant to this clause (c) upon receipt of such written confirmation by the Administrative Agent and the Borrower), or (d) has, or has a direct or indirect controlling parent company that has (in each case, after the Closing Date), (i) become the subject of a proceeding under any Debtor Relief Law, (ii) had appointed for it a receiver, custodian, conservator, trustee, administrator, assignee for the benefit of creditors or similar Person charged with reorganization or liquidation of its business or assets, including the Federal Deposit Insurance Corporation or any other state or federal regulatory authority acting in such a capacity, or (iii) become the subject of a Bail-in Action; provided that a Lender shall not be a Defaulting Lender solely by virtue of the ownership or acquisition of any equity interest in that Lender or any direct or indirect parent company thereof by a Governmental Authority so long as such ownership interest does not result in or provide such Lender with immunity from the jurisdiction of courts within the United States or from the enforcement of judgments or writs of attachment on its assets or permit such Lender (or such Governmental Authority) to reject, repudiate, disavow or disaffirm any contracts or agreements made with such Lender. Any determination by the Administrative Agent that a Lender is a Defaulting Lender under any one or more of clauses (a) through (d) above shall be conclusive and binding absent manifest error, and such Lender shall be deemed to be a Defaulting Lender (subject to Section 2.21(b)) upon delivery of written notice of such determination to the Borrower, the Issuing Bank and each Lender.

"Development Documents" shall mean, collectively, (i) that certain Amended and Restated Master Development Agreement, dated as of December 28, 2015, by and among EPT Sub, EPR Sub, Adelaar Developer, the Borrower, Empire Sub I and Empire Sub II, as amended by that certain First Amendment to Amended and Restated Master Development Agreement, dated as of January 19, 2017, by and among EPT Sub, EPR Sub, Adelaar Developer, the Borrower, Empire Sub I and Empire Sub II; (ii) the Ground Lease, the Entertainment Village Lease and the Golf Course Lease; (iii) the Purchase Option Agreement; (iv) that certain Completion Guaranty (EPR Properties), dated as of December 28, 2015, by EPR Properties, for the benefit of the Borrower, Empire Sub I, Empire Sub II and Empire; (v) that certain Completion Guaranty (Empire Resorts, Inc.), dated as of December 28, 2015, by Empire, for the benefit of EPR Sub, EPT Sub, Adelaar Developer and EPR Properties; (vi) that certain Amended and Restated Master Declaration of Covenants, Conditions, Easements and Restrictions for Adelaar, dated as of December 28, 2015, by and among EPT Sub, EPR Sub, the Master Association and Adelaar Developer, as amended by that certain First Amendment to Amended and Restated Master Declaration of Covenants, Conditions, Easements

and Restrictions for Adelaar, dated as of January 19, 2017, by and among EPT Sub, EPR Sub, the Master Association and Adelaar Developer; (vii) that certain Assignment and Assumption Agreement, dated as of December 28, 2015 by and between MRMI, as assignor, and the Borrower, as assignee; (viii) that certain Subordination, Non-Disturbance and Attornment Agreement, dated as of December 28, 2015, by and among EPR Sub, Adelaar Developer and Empire Sub I, as amended by that certain First Amendment to Subordination, Non-Disturbance and Attornment Agreement, dated as of January 19, 2017, by and among EPR Sub, Adelaar Developer and Empire Sub I; and (ix) that certain Subordination, Non-Disturbance and Attornment Agreement, dated as of December 28, 2015, by and among EPR Sub, Adelaar Developer and Empire Sub II, as amended by that certain First Amendment to Subordination, Non-Disturbance and Attornment Agreement, dated as of January 19, 2017, by and among EPR Sub, Adelaar Developer and Empire Sub II.

"Deposit Account" shall mean a demand, time, savings, passbook or like account with a bank, savings and loan association, credit union or like organization, other than an account evidenced by a negotiable certificate of deposit.

"Disbursement Agreements" shall mean the Building Loan Disbursement Agreement and the Project Disbursement Agreement.

"Discharge of Term Loan Obligations" shall mean the "payment in full" (as defined in the Term Loan Agreement (as in effect on the date hereof)) of the Term Loan Obligations.

"Disqualified Capital Stock" shall mean any Capital Stock that, by its terms (or by the terms of any security or other Capital Stock into which it is convertible or for which it is exchangeable), or upon the happening of any event or condition, (a) requires the payment of any dividends (other than dividends payable solely in shares of Qualified Capital Stock), (b) matures or is mandatorily redeemable or subject to mandatory repurchase or redemption or repurchase at the option of the holders thereof (other than solely for Qualified Capital Stock), in each case in whole or in part and whether upon the occurrence of any event, pursuant to a sinking fund obligation on a fixed date or otherwise (including as the result of a failure to maintain or achieve any financial performance standards) or (c) is or becomes convertible into or exchangeable for, automatically or at the option of any holder thereof, any Indebtedness, Capital Stock or other assets (other than Qualified Capital Stock), in the case of each of clauses (a), (b) and (c), prior to the date that is 91 days after the Commitment Termination Date at the time of issuance of such Capital Stock (other than (i) following payment in full of the Obligations or (ii) upon a Change in Control; provided that any payment required pursuant to this clause (ii) is subject to the prior payment in full of the Obligations; provided, however, that if any such Capital Stock is issued to any employee or to any plan for the benefit of employees of the Borrower or its Subsidiaries or by any such plan to such employees, such Capital Stock shall not constitute Disqualified Capital Stock solely because it may be required to be repurchased by a Loan Party in order to satisfy applicable statutory or regulatory obligations or as a result of such employee's termination, death or disability).

"Disqualified Institution" shall mean, on any date, (a) any Person that (i) has failed to timely file pursuant to applicable Gaming Laws (1) any application requested in writing of that Person by any Gaming Authority in connection with any licensing, determination of suitability or qualification, or waiver of licensing required of that Person as a lender to the Borrower or (2) any

required application or other papers requested in writing of that Person by any Gaming Authority in connection with any licensing, determination of the suitability, or waiver of licensing of that Person as a lender to the Borrower, (ii) has withdrawn (except where requested or permitted by the Gaming Authority) any such application or other required papers or (iii) by any final determination by a Gaming Authority pursuant to applicable Gaming Laws (1) has been determined as "unsuitable" or "disqualified" as a lender to the Borrower or (2) has been denied the issuance of any license or other approval required under applicable Gaming Laws to be held by it as a lender to the Borrower, (b) any Person designated by the Borrower as a "Disqualified Institution" by written notice delivered to the Administrative Agent on or prior to the date hereof, together with Affiliates thereof to the extent clearly identifiable as such on the basis of such Affiliate's name and (c) any other Person (including named Affiliates thereof), together with Affiliates thereof to the extent clearly identifiable as such on the basis of such Affiliate's name, that is a competitor of the Borrower or any of its Subsidiaries or Affiliates that owns or operates one or more gaming establishments (including any Person that directly or indirectly owns or Controls such Person but excluding bona fide debt funds, financial institutions or other similar institutional debt investors, in each case, so long as no competitor of the Borrower makes investment decisions for such Person or has the power, directly or indirectly, to direct or cause the direction of the investment decisions of such Person), which Person has been designated by the Borrower as a "Disqualified Institution" by written notice to the Administrative Agent not less than 5 Business Days prior to such date; provided that, in the case of Persons described in clauses (b) and (c) above, (x) "Disqualified Institutions" shall exclude any Person that the Borrower has designated as no longer being a "Disqualified Institution" by written notice delivered to the Administrative Agent from time to time and (y) the Administrative Agent may distribute the list of any Persons designated by the Borrower as a Disqualified Institution to the Lenders; and, provided further, that in no event shall (x) a Disqualified Institution include any Permitted Holder or any Affiliate thereof and (y) such a designation apply retroactively to disqualify any Lender prior to such designation becoming effective.

"Dollars" or "$" shall mean lawful money of the United States of America.

"EEA Financial Institution" shall mean (a) any credit institution or investment firm established in any EEA Member Country which is subject to the supervision of an EEA Resolution Authority, (b) any entity established in an EEA Member Country which is a parent of an institution described in clause (a) of this definition, or (c) any financial institution established in an EEA Member Country which is a subsidiary of an institution described in clauses (a) or (b) of this definition and is subject to consolidated supervision with its parent.

"EEA Member Country" shall mean any of the member states of the European Union, Iceland, Liechtenstein, and Norway.

"EEA Resolution Authority" shall mean any public administrative authority or any person entrusted with public administrative authority of any EEA Member Country (including any delegee) having responsibility for the resolution of any EEA Financial Institution.

"Eligible Assignee" shall mean (a) any commercial bank, insurance company, investment fund, mutual fund or other entity that is an "accredited investor" (as defined in Regulation D under the Securities Act) and which extends credit or buys loans as one of its

businesses; and (b) any Lender, Affiliate of any Lender or Approved Fund; provided, that neither the Borrower, an Affiliate of the Borrower, any Defaulting Lender, any Defaulting Lender's Subsidiaries, any natural Person (or holding company, investment vehicle or trust for, or owned and operated for the primary benefit of, a natural Person) nor, subject to Section 9.04(g), any Disqualified Institution shall be an Eligible Assignee.

"Empire" shall mean Empire Resorts, Inc., a Delaware corporation.

"Empire Sub I" shall mean Empire Resorts Real Estate I, LLC, a New York limited liability company.

"Empire Sub II" shall mean Empire Resorts Real Estate II, LLC, a New York limited liability company.

"Entertainment Village" shall have the meaning given in the Building Loan Disbursement Agreement.

"Entertainment Village Lease" shall mean that certain Sub-Lease, dated as of December 28, 2015, between Adelaar Developer and Empire Sub II, as amended by that certain First Amendment to Entertainment Village Lease, dated as of January 19, 2017, between Adelaar Developer and Empire Sub II.

"Environmental Claim" shall mean any written notice of violation, claim, action, suit, proceeding, demand, abatement order or other order or directive (conditional or otherwise), by any Governmental Authority or any other Person, arising (a) pursuant to or in connection with any actual or alleged violation of any Environmental Law; (b) in connection with any Hazardous Material or any actual or alleged Hazardous Materials Activity; or (c) in connection with any actual or alleged damage, injury, threat or harm to health and safety (as they relate to exposure to Hazardous Materials), natural resources or the environment.

"Environmental Indemnity Agreements" shall mean (a) the Environmental Indemnity Agreement, substantially in the form of Exhibit E, dated as of the date hereof, executed and delivered by the Borrower in favor of the Administrative Agent and the Lenders, (b) the Environmental Indemnity Agreement, substantially in the form of Exhibit E, dated as of the date hereof, executed and delivered by the Borrower and Empire Sub I in favor of the Administrative Agent and the Lenders, (c) the Environmental Indemnity Agreement, substantially in the form of Exhibit E, dated as of the date hereof, executed and delivered by the Borrower and Empire Sub II in favor of the Administrative Agent and the Lenders and (d) each other environmental indemnity agreement executed and delivered by a Loan Party in favor of the Administrative Agent and the Lenders from time to time, substantially in the form of Exhibit E, with such changes as shall be advisable under the law of the jurisdiction governing such environmental indemnity agreement and as are reasonably satisfactory to the Administrative Agent.

"Environmental Laws" shall mean all applicable Federal, state, local and foreign laws (including common law), treaties, regulations, rules, ordinances, codes, decrees, judgments, directives, orders (including consent orders), and agreements, in each case having the force and

effect of law and relating to protection of the environment, the protection of natural resources, the protection of public health and safety from environmental hazards or the presence of, Release or threatened Release of, or exposure to, Hazardous Materials, or the generation, manufacture, processing, distribution, use, treatment, storage, transport, recycling or handling of, or the arrangement for such activities with respect to, Hazardous Materials.

"Environmental Liability" shall mean all liabilities, obligations, damages, losses, claims, actions, suits, judgments, orders, fines, penalties, fees, expenses and costs (including administrative oversight costs, natural resource damages and remediation costs), whether contingent or otherwise, arising out of or relating to (a) compliance or non-compliance with any Environmental Law, (b) the generation, use, handling, transportation, storage, treatment or disposal of any Hazardous Materials, (c) exposure to any Hazardous Materials, (d) the Release or threatened Release of any Hazardous Materials, (e) any Hazardous Materials Activity or (f) any contract, agreement or other consensual arrangement pursuant to which liability is assumed or imposed with respect to any of the foregoing.

"Environmental Permit" shall mean any Permit required by any applicable Environmental Law.

"EPR Sub" shall mean EPR Concord II, L.P., a Delaware limited partnership.

"EPT Sub" shall mean EPT Concord II, LLC, a Delaware limited liability company.

"Equity Pledge Agreement" shall mean that certain Equity Pledge Agreement, substantially in the form of Exhibit C-3, dated as of the date hereof, among the Equity Pledgor, the Borrower and the Collateral Agent; provided that in the event of the consummation of an Equity Pledgor Transaction, "Equity Pledge Agreement" shall be deemed to refer to the Equity Pledge Agreement entered into by Empire in connection therewith (and, in such case, the Collateral Agent shall, at the cost of the Borrower, release the replaced Equity Pledgor from its Equity Pledge Agreement pursuant to documentation reasonably acceptable to the Collateral Agent).

"Equity Pledgor" shall mean Montreign Holding Company, LLC, a New York limited liability company; provided that, in the event of the consummation of an Equity Pledgor Transaction, "Equity Pledgor" shall be deemed to refer to Empire.

"Equity Pledgor Transaction" shall mean a transaction pursuant to which Empire acquires a direct interest in 100% of each class of issued and outstanding Capital Stock of the Borrower; provided that in connection with such acquisition, Empire shall execute and deliver to the Administrative Agent and the Collateral Agent a new Equity Pledge Agreement or an assignment of the then existing Equity Pledge Agreement, in either case, in form and substance reasonably satisfactory to the Collateral Agent, and take all such other actions and execute and deliver, or cause to be executed and delivered, to the extent applicable, all such documents, instruments, agreements, and certificates as are similar to those described in Section 4.01(a), Section 4.01(b), Section 4.01(d), Section 4.01(e), Section 4.01(f), Section 4.01(j) and Section 4.01(k).

"ERISA" shall mean the Employee Retirement Income Security Act of 1974, as amended from time to time, and the regulations issued thereunder.

"ERISA Affiliate" shall mean any trade or business (whether or not incorporated) that, together with any Loan Party, is treated as a single employer under Section 414(b) or (c) of the Tax Code, or solely for purposes of Section 302 of ERISA and Section 412 of the Tax Code, is treated as a single employer under Section 414 of the Tax Code.

"ERISA Event" shall mean (a) any "reportable event", as defined in Section 4043(c) of ERISA or the regulations issued thereunder, with respect to a Benefit Plan (other than an event for which the 30-day notice period is waived by regulation); (b) a Benefit Plan is in "at risk" status under Section 430 of the Tax Code or Section 303 of ERISA; (c) the filing pursuant to Section 412(c) of the Tax Code or Section 302(c) of ERISA of an application for a waiver of the minimum funding standard with respect to any Benefit Plan; (d) the incurrence by any Loan Party or any of its ERISA Affiliates of any liability under Title IV of ERISA with respect to the termination of any Benefit Plan or the withdrawal or partial withdrawal of any Loan Party or any of its ERISA Affiliates from any Benefit Plan or Multiemployer Plan; (e) the receipt by any Loan Party or any of its ERISA Affiliates from the PBGC or a plan administrator of any notice relating to the intention to terminate any Benefit Plan or to appoint a trustee to administer any Benefit Plan; (f) the adoption of any amendment to a Benefit Plan that would require the provision of security pursuant to Section 436(f) of the Tax Code; (g) the receipt by any Loan Party or any of its ERISA Affiliates of any notice, or the receipt by any Multiemployer Plan from any Loan Party or any of its ERISA Affiliates of any notice, concerning the imposition of Withdrawal Liability or a determination that a Multiemployer Plan is, or is expected to be, insolvent or in reorganization, within the meaning of Title IV of ERISA or in critical or endangered status under Section 432 of the Tax Code or Section 305 of ERISA; (h) the occurrence of a nonexempt "prohibited transaction" (within the meaning of Section 4975 of the Tax Code) caused by any Loan Party holding "plan assets" (within the meaning of Section 3(42) of ERISA) or with respect to which any Loan Party could otherwise reasonably be expected to incur any liability; (i) a Lien shall arise under Section 430(k) of the Tax Code or Section 303(k) of ERISA; or (j) any other event or condition with respect to a Benefit Plan or Multiemployer Plan that could reasonably be expected to result in material liability of any Loan Party.

"EU Bail-In Legislation Schedule" shall mean the EU Bail-In Legislation Schedule published by the Loan Market Association (or any successor person), as in effect from time to time.

"Event of Default" shall have the meaning given in Section 7.01.

"Excluded Accounts" shall have the meaning given to such term in the Pledge and Security Agreement.

"Excluded Collateral" shall mean (a) any license, permit, or authorization issued by any of the Gaming Authorities or any other Governmental Authority or any other assets (including any Gaming License and any Gaming Reserves), in each case, solely to the extent a security interest therein is prohibited under Gaming Laws or other applicable law, or under the terms of any such license, permit, or authorization, or which would require a consent, finding of suitability or other

similar approval or procedure by any of the Gaming Authorities or any other Governmental Authority prior to being pledged, hypothecated, or given as collateral security (to the extent such consent, finding or approval has not been obtained); (b) any lease, license, contract or agreement to which any Loan Party is a party or any of its rights or interests thereunder if and for so long as the grant of a security interest therein shall (x) constitute or result in (i) the abandonment, invalidation or unenforceability of any right, title or interest of any Loan Party therein or (ii) a breach or termination pursuant to the terms of, or a default under, any such lease, license, contract or agreement or (y) pursuant thereto require any consent to assignment of such lease, license, contract or agreement from any Person other than the Borrower and its Affiliates which has not been obtained (unless, in the case of exclusions referred to in clauses (a) and/or (b) above, such law, rule, regulation, term, provision or condition would be rendered ineffective with respect to the creation of the security interest hereunder pursuant to Sections 9-406, 9-407, 9-408 or 9-409 of the UCC (or any successor provision or provisions) of any relevant jurisdiction or any other applicable law (including any Debtor Relief Law) or principles of equity), provided, however, that the Collateral shall include (and such security interest shall attach) immediately at such time as the contractual or legal prohibitions described in clauses (a) and/or (b) above shall no longer be applicable and to the extent severable, shall attach immediately to any portion of such lease, license, contract, permit, authorization or agreement not subject to the prohibition specified above; (c) assets sold to a Person which is not a Loan Party in compliance with the Loan Documents; (d) assets to the extent owned by a Subsidiary Guarantor after the release of the guarantee of such Subsidiary Guarantor in accordance with the Subsidiary Guaranty and the release of such Subsidiary Guarantor from the Pledge and Security Agreement in accordance with the terms thereof; (e) assets subject to a Lien permitted by Section 6.02(m) (including Specified FF&E Collateral (as defined in the Term Loan Agreement)) to the extent the documents related to such Lien prohibit the granting of a security interest under the Security Documents; (f) any "intent-to-use" trademark application for registration of a Trademark filed pursuant to Section 1(b) of the Lanham Act, 15 U.S.C. §1051, prior to the filing of a "Statement of Use" pursuant to Section 1(d) of the Lanham Act or an "Amendment to Allege Use" pursuant to Section 1(c) of the Lanham Act with respect thereto, to the extent and for so long as creation by a Loan Party of a security interest therein would impair the validity or enforceability of any registration that issues from such intent-to-use trademark application; (g) any Excluded Accounts; (h) any Excluded Leased Real Property; and (i) any Specified Hedging Agreement or Specified Cash Management Agreement (in each case, as defined in the Term Loan Agreement) or any Specified Cash Management Agreement. Notwithstanding the foregoing, (x) all Proceeds and Sale Proceeds (each as defined in the Security Documents) of the Excluded Collateral (other than those specified pursuant to clause (d) or (e) above) shall constitute Collateral and shall be included within the property and assets over which a security interest is granted pursuant to the Security Documents, unless such Proceeds or Sale Proceeds would independently constitute Excluded Collateral and (y) Excluded Collateral shall not include any Property of any of the Loan Parties to which a Lien permitted pursuant to Section 6.02(x) attaches (or purports to attach).

"Excluded Leased Real Property" shall mean any lease or license (or sublease or sublicense) of Real Property by the Borrower or its Subsidiaries of (a) warehouse space utilized for the storage of equipment in the ordinary course of business, (b) office space for administrative services in the ordinary course of business, (c) suites or skyboxes at entertainment venues for the purpose of hosting customers, employees and other Persons at events occurring at such entertainment

venues, (d) signs used for marketing and other purposes in the ordinary course of business, or (e) other Real Property not otherwise covered by clauses (a) through (e) above, so long as the aggregate rents or other payments thereunder in the aggregate over the term of all such leases and licenses (including any renewals solely at the option of the Borrower or any Subsidiary), plus the aggregate amount of all Consolidated Capital Expenditures and Project Costs made by the Borrower and its Subsidiaries with respect to the Real Property encumbered by all such leases and licenses, does not exceed $5,000,000; provided, that (i) the aggregate rent to be paid by the Borrower and its Subsidiaries under all leases or licenses of Real Property described in clauses (a) through (e) above shall not be material to the value of the overall business of the Borrower and its Subsidiaries, taken as a whole, (ii) no such lease or license shall be required to be maintained by the Borrower or any of its Subsidiaries pursuant to any Legal Requirement, including any zoning law or Gaming Law, in order for the Borrower or any of its Subsidiaries to operate the Project, and (iii) no such lease or license shall be deemed "Excluded Leased Real Property" to the extent the loss thereof could reasonably be expected to have a Material Adverse Effect. For purposes of clarification, the Real Property leased by the Borrower pursuant to the IDA Leaseback Agreement, the Ground Lease, the Entertainment Village Lease and the Golf Course Lease shall not be deemed Excluded Leased Real Property.

"Excluded Swap Obligations" shall have the meaning given to such term in the Pledge and Security Agreement.

"Excluded Taxes" shall mean, with respect to the Administrative Agent or any Lender, (a) Taxes imposed on (or measured by) such recipient's net income (however denominated) and franchise (and any similar) Taxes imposed in lieu of net income Taxes, in each case (x) by the jurisdiction under the laws of which such recipient is organized (or any political subdivision thereof), or in which its principal office is located or, in the case of any Lender, in which its applicable lending office is located or (y) that are Other Connection Taxes, (b) any branch profits taxes imposed by any jurisdiction (or any political subdivision thereof) described in clause (a) above, (c) in the case of any Lender (other than an assignee pursuant to a request by the Borrower under Section 2.20 or Section 2.22), any U.S. federal withholding Tax that is imposed on amounts payable to such Lender under the law applicable at the time such Lender becomes a party to this Agreement (or designates a new lending office), except to the extent that at the time of designation of a new lending office (or assignment) any such Lender (or its assignor, if any) was entitled to receive additional amounts from the Borrower or any other Company with respect to such withholding tax pursuant to Section 2.19(a), (d) any U.S. federal withholding Tax attributable to any Lender or the Administrative Agent's failure to comply with Section 2.19 (e) or (f), and (e) any U.S. federal withholding Taxes imposed under FATCA.

"Executive Order No. 13224" shall mean the Executive Order No. 13224 on Terrorist Financing, effective September 24, 2001, as the same as been, or shall hereafter be, renewed, extended, amended or replaced.

"Facility" shall mean the Commitments and the extensions of credit made thereunder.

"Family Group" shall mean an individual's siblings, former or then current spouse, lineal ancestors, and/or descendants (whether by birth or adoption) and descendants (whether by

birth or adoption) of the individual's siblings or former or then current spouse, and any trust, partnership, limited partnership, limited liability company or other similar entity wherever organized, or retirement account primarily for the benefit of the individual and/or the individual's siblings, former or then current spouse, lineal ancestors, and/or descendants (whether by birth or adoption) and descendants (whether by birth or adoption) of the individual's siblings or former or then current spouse and the personal estate of any of the foregoing Persons.

"FATCA" shall mean Sections 1471 through 1474 of the Tax Code, as of the date of this Agreement (or any amended or successor version that is substantively comparable and not materially more onerous to comply with), any current or future regulations or official interpretations thereof, and any agreements entered into pursuant to Section 1471(b)(1) of the Tax Code (or any amended or successor version described above) or any fiscal or regulatory legislation, or other official rules or practices adopted pursuant to, or in connection with, any intergovernmental agreement, treaty, convention or other official agreement among Governmental Authorities entered into in connection with the implementation of the foregoing.

"Federal Funds Effective Rate" shall mean, for any day, the rate per annum equal to the weighted average of the rates on overnight federal funds transactions with members of the Federal Reserve System (or, if such day is not a Business Day, for the immediately preceding Business Day), as published by the Federal Reserve Bank of New York on the Business Day next succeeding such day.

"Fee Letter" shall mean that certain Senior Secured Credit Facilities Engagement Letter, dated as of January 11, 2017, by and among Fifth Third Bank and the Borrower

"Fees" shall mean all fees payable by the Borrower or any Affiliate of the Borrower to the Lead Arranger, the Agents, the Issuing Bank, the Lenders or any other Person under or in connection with the Facility, including all fees described in Section 2.10 and the Fee Letter.

"Fifth Third Bank" shall mean Fifth Third Bank, an Ohio banking corporation.

"Financial Officer" of any Person shall mean the chief financial officer, principal accounting officer or treasurer of such Person or, any other authorized representative of such Person reasonably satisfactory to the Administrative Agent.

"Financial Officer Certification" shall mean, with respect to the financial statements for which such certification is required, the certification of a Financial Officer of the Borrower that such financial statements fairly present, in all material respects, the financial condition of the Borrower and its Subsidiaries as at the dates indicated and the results of their operations and their cash flows for the periods indicated in accordance with GAAP, subject, with respect to financial statements delivered for any month or Fiscal Quarter, to changes resulting from audit and normal year-end adjustments and the absence of footnotes.

"Financial Plan" shall have the meaning given in Section 5.01(i).

"First Lien Debt" shall mean, as at any date of determination, Consolidated Total Debt that is secured by Liens on any Property of the Borrower or its Subsidiaries which, to the extent such Property constitutes Collateral, is not junior in priority to the Lien on such Property securing the Obligations.

"First Lien Leverage Ratio" shall mean, on any date, the ratio of (a) all First Lien Debt outstanding on such date to (b) Consolidated Adjusted EBITDA for the period of four consecutive Fiscal Quarters most recently ended on or prior to such date (subject to such adjustments as are specified in Section 6.08(b)), taken as one accounting period.

"Fiscal Quarter" shall mean a fiscal quarter of any Fiscal Year.

"Fiscal Year" shall mean the fiscal year of the Loan Parties ending on December 31 of each calendar year.

"Foreign Lender" shall mean any Lender (or, if such Lender is a disregarded entity for United States federal income tax purposes, the Person treated, for United States federal income tax purposes, as the regarded owner of the assets of such Lender) that is not a "United States person" as defined under Section 7701(a)(30) of the Tax Code.

"Fronting Exposure" shall mean, at any time there is a Defaulting Lender, such Defaulting Lender's Pro Rata Share of the outstanding Letter of Credit Obligations other than Letter of Credit Obligations as to which such Defaulting Lender's participation obligation has been reallocated to other Lenders or Cash Collateralized in accordance with the terms hereof.

"Full Opening Date" shall mean the later of (a) the Casino Opening Date and (b) the date upon which at least 95% of all of the rooms of the Hotel (as defined in the Building Loan Disbursement Agreement) are open to the public.

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

"Funding Notice" shall mean a notice substantially in the form of Exhibit B-1.

"GAAP" shall mean generally accepted accounting principles in the United States.

"Gaming Authorities" shall mean the applicable gaming board, commission or other Governmental Authority responsible for interpreting, administering and enforcing the Gaming Laws applicable to the Borrower, any other Loan Party or the Project, including the New York State Gaming Commission.

"Gaming Laws" shall mean all laws, rules, regulations, orders and other enactments applicable to gaming privileges, operations or activities with respect to the Borrower, any other Loan Party or the Project, as applicable, as in effect from time to time, including the policies, interpretations and administration thereof by any Gaming Authority.

"Gaming License Conditions" shall mean the License Conditions attached as Exhibit 1 to that certain Gaming Facility License Award Montreign Operating Company, LLC, and any amendments, modifications and supplements thereto permitted hereunder.

"Gaming Licenses" shall mean any licenses, permits, franchises, approvals, regulations, findings of suitability or other authorizations from any Gaming Authority or other Governmental Authority required to own, develop, lease or operate (directly or indirectly) the Project because of the gaming operations conducted or proposed to be conducted thereat or by any Loan Party, including all such licenses, permits, franchises, approvals, regulations, findings of suitability or other authorizations granted under Gaming Laws or any other Legal Requirement related thereto.

"Gaming Reserves" shall mean any mandatory gaming security reserves or other reserves required under applicable Gaming Laws or by directive of any Gaming Authorities related thereto that in any such case are required pursuant to applicable Gaming Laws to be maintained at the Project in the form of "cage cash" or otherwise constitute Excluded Collateral.

"Golf Course" shall mean an 18-hole golf course to be located on the Real Property subject to the Golf Course Lease.

"Golf Course Lease" shall mean that certain Sub-Lease, dated as of December 28, 2015, between Adelaar Developer and Empire Sub I, as amended by that certain First Amendment to Golf Course Lease, dated as of January 19, 2017, by and between Adelaar Developer and Empire Sub I.

"Governing Documents" shall mean, as to any Person, the articles or certificate of incorporation and bylaws, any certificate of limited partnership, any shareholders' agreement, articles of organization, certificate of organization, or certificate of formation, limited liability company agreement, operating agreement, limited partnership agreement or other partnership agreement or other formation or constituent documents of such Person.

"Governmental Acts" shall mean any act or omission, whether rightful or wrongful, of any present or future de jure or de facto government or Governmental Authority.

"Governmental Authority" shall mean the government of the United States of America or any other nation, any political subdivision thereof, whether federal, state or local, and any agency, authority (including any Gaming Authority), instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government (including any supra-national bodies such as the European Union or the European Central Bank).

"Ground Lease" shall mean that certain Lease dated as of December 28, 2015, by and between EPT Sub and the Borrower, as amended by that certain First Amendment to Casino Lease, dated as of January 19, 2017, by and between EPT Sub and the Borrower.

"Guarantee" of or by any Person (for purposes of this definition, the "guarantor") shall mean any obligation, contingent or otherwise, of (a) the guarantor or (b) another Person

(including any bank under a letter of credit) to induce the creation of which the guarantor has issued a reimbursement, counterindemnity or similar obligation, in either case guaranteeing or having the economic effect of guaranteeing any Indebtedness or other obligation of any other Person (the "primary obligor") in any manner, whether directly or indirectly, and including any obligation, contingent or otherwise, of the guarantor, direct or indirect, (i) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness or other obligation or to purchase (or to advance or supply funds for the purchase of) any security for the payment of such Indebtedness or other obligation, (ii) to purchase or lease property, securities or services for the purpose of assuring the owner of such Indebtedness or other obligation of the payment of such Indebtedness or other obligation, (iii) to maintain working capital, equity capital or any other financial statement condition or liquidity of the primary obligor so as to enable the primary obligor to pay such Indebtedness or other obligation or maintain solvency or net worth, (iv) as an account party in respect of any letter of credit or letter of guaranty issued to support such Indebtedness or obligation or (v) to otherwise assure or hold harmless the owner of such Indebtedness or other obligation against loss in respect thereof; provided, however, that the term "Guarantee" shall not include endorsements for collection or deposit in the ordinary course of business. The amount of any obligation under a Guarantee of a guarantor shall be deemed to be the lower of (A) an amount equal to the stated or determinable amount of the primary obligation in respect of which such Guarantee is made and (B) the maximum amount for which such guarantor may be liable pursuant to the terms of the instrument embodying such Guarantee, unless such primary obligation and the maximum amount for which such guarantor may be liable are not stated or determinable, in which case the amount of such obligation shall be such guarantor's maximum reasonably anticipated liability in respect thereof as determined by the Borrower in good faith.

"Hazardous Materials" shall mean any petroleum (including crude oil or fraction thereof) or petroleum products or byproducts, or any pollutant, contaminant, chemical, hazardous, or toxic substances, materials or wastes, in each case defined as such, or regulated by, or pursuant to, any Environmental Law, or requiring removal, remediation or reporting under any Environmental Law, including asbestos, or asbestos containing material, radon or other radioactive material, polychlorinated biphenyls and urea formaldehyde insulation.

"Hazardous Materials Activity" shall mean any past, current or proposed activity, event or occurrence involving any Hazardous Materials, including the use, manufacture, possession, storage, holding, presence, existence, location, Release, threatened Release, discharge, placement, generation, transportation, processing, construction, treatment, abatement, removal, remediation, disposal, disposition or handling of any Hazardous Materials, and any corrective action or response action with respect to any of the foregoing.

"Hedging Agreement" shall mean any agreement with respect to any swap, forward, cap, collar, future or derivative transaction or option or similar agreement involving, or settled by reference to, one or more rates, currencies, fuel or other commodities, equity or debt instruments or securities, or economic, financial or pricing indices or measures of economic, financial or pricing risk or value or any similar transaction or any combination of these transactions; provided, however, that no phantom stock or similar plan providing for payments on account of services provided by

current or former directors, officers, employees or consultants of any Loan Party shall be a Hedging Agreement.

"IDA" shall mean the County of Sullivan Industrial Development Agency.

"IDA Documents" shall mean, collectively, (I) (a) that certain Amended and Restated Agent Agreement, dated as of September 18, 2015, among the Borrower, the IDA and MRMI, (b) that certain Amended and Restated Payment in Lieu of Tax Agreement, dated as of October 1, 2015, among the Borrower, MRMI and the IDA, (c) the IDA Lease Agreement, (d) the IDA Leaseback Agreement, (e) that certain Bill of Sale to Agency, dated as of October 1, 2015, executed by the Borrower and MRMI in favor of the IDA, (f) that certain Bill of Sale to Company, dated as of October 1, 2015, executed by the IDA in favor of MRMI and the Borrower, (g) that certain Environmental Compliance and Indemnification Agreement, dated as of September 5, 2014, by and among IDA, MRMI and the Borrower, and (h) that certain Closing Conditions Letter, dated as of September 5, 2014, among the IDA, the Borrower, MRMI, EPT Sub and EPR Sub, as amended by that certain Amendment to September 5, 2014 Closing Conditions Letter, dated as of May 1, 2015, by and among, the IDA, the Borrower and MRMI, as further amended by that certain Closing Conditions Letter, dated as of October 1, 2015, by and among the IDA, the Borrower and MRMI, in each case, as assigned and/or amended, as applicable, by that certain Omnibus Assignment and Assumption Agreement dated as of November 21, 2016, by and among MRMI, the Borrower and the IDA and that certain Omnibus Amendment to Project Documents, dated as of January 19, 2017, between the Borrower and IDA, (II) (a) that certain Agent and Project Agreement, dated as of December 22, 2016, between Empire Sub I and the IDA, (b) that certain Payment in Lieu of Taxation Agreement, dated as of December 22, 2016, between Empire Sub I and the IDA, (c) that certain Bill of Sale to Agency, dated as of December 22, 2016, executed by Empire Sub I in favor of the IDA, (d) that certain Bill of Sale to Company, dated as of December 22, 2016, executed by the IDA in favor of Empire Sub I, (e) that certain Environmental Compliance and Indemnification Agreement, dated as of December 22, 2016, between the IDA and Empire Sub I, (f) that certain Informational Letter Regarding Sales and Use Tax Exemptions, dated as of December 22, 2016, by the IDA, and (g) that certain New York State Sales and Use Tax Exemption Letter, dated as of December 22, 2016, by the IDA, in each case, as amended, as applicable, by that certain Omnibus Amendment to Project Documents, dated as of January 19, 2017, between Empire Sub I and the IDA, and (III) any other similar agreements entered into among the IDA and Empire Sub II with respect to the Entertainment Village.

"IDA Lease Agreement" shall mean (a) that certain Amended and Restated Lease to Agency dated as of October 1, 2015, among the Borrower, MRMI and the IDA, as assigned and amended by that certain Omnibus Assignment and Assumption Agreement dated as of November 21, 2016, by and among MRMI, the Borrower and the IDA and that certain Omnibus Amendment to Project Documents, dated as of January 19, 2017, between the Borrower and the IDA, (b) that certain Lease to Agency dated as of December 22, 2016, between Empire Sub I and the IDA, as amended by that certain Omnibus Amendment to Project Documents, dated as of January 19, 2017, between Empire Sub I and the IDA, and (c) any other similar lease agreement entered into between Empire Sub II and the IDA with respect to the Entertainment Village.

"IDA Leaseback Agreement" shall mean (a) that certain Amended and Restated Leaseback to Company dated as of October 1, 2015, among the Borrower, MRMI and the IDA, as assigned and amended by that certain Omnibus Assignment and Assumption Agreement dated as of November 21, 2016, by and among MRMI, the Borrower and the IDA and that certain Omnibus Amendment to Project Documents, dated as of January 19, 2017, between the Borrower and the IDA, (b) that certain Leaseback to Company dated as of December 22, 2016, between Empire Sub I and the IDA, as amended by that certain Omnibus Amendment to Project Documents, dated as of January 19, 2017, between Empire Sub I and the IDA, and (c) any other similar leaseback agreement entered into between Empire Sub II and the IDA with respect to the Entertainment Village.

"Impacted Interest Period" shall have the meaning given in the definition of "LIBO Rate".

"Increased-Cost Lender" shall have the meaning given in Section 2.22.

"Indebtedness" shall mean, with respect to any Person, without duplication, (a) all indebtedness for borrowed money; (b) all Capital Lease Obligations; (c) notes payable and drafts accepted representing extensions of credit whether or not representing obligations for borrowed money; (d) any obligation owed for all or any part of the deferred purchase price of property or services (excluding any such obligations incurred under ERISA and such obligations with respect to trade payables and accruals incurred in the ordinary course of business); (e) all indebtedness secured by any Lien on any property or asset owned or held by that Person regardless of whether the indebtedness secured thereby shall have been assumed by that Person or is nonrecourse to the credit of that Person (provided, that if the indebtedness secured thereby has not been assumed or is non-recourse, the amount of such indebtedness included for the purposes of this definition will be the amount equal to the lesser of the fair market value of such property and the amount of the indebtedness secured); (f) the face amount of any acceptance, letter of credit or similar facility issued for the account of that Person or as to which that Person is otherwise liable for reimbursement of drawings; (g) all obligations of such Person, contingent or otherwise, with respect to the redemption, repayment or other repurchase of Disqualified Capital Stock (excluding accrued dividends that have not increased the liquidation preference of such Disqualified Capital Stock); (h) the direct or indirect guaranty, endorsement (other than for collection or deposit in the ordinary course of business), co-making, discounting with recourse or sale with recourse by such Person of the indebtedness of another (other than in the case of any Loan Party, indebtedness of any other Loan Party); (i) all indebtedness created or arising under any conditional sale or other title retention agreement with respect to Property acquired by such Person (even though the rights and remedies of the seller or lender under such agreement in the event of default are limited to repossession of such Property (provided, that if the indebtedness is non-recourse, the amount of such indebtedness included for the purposes of this definition will be the amount equal to the lesser of the fair market value of such Property and the amount of such indebtedness)); (j) all obligations of such Person in respect of any Hedging Agreement; and (k) any Guarantee of such Person in respect of obligations of the kind referred to in clauses (a) through (j) above. The Indebtedness of any Person shall include the Indebtedness of any other Person (including any partnership in which such Person is a general partner) to the extent such Person is liable therefor as a result of such Person's ownership interest in, or other relationship with, such other Person, except to the extent the terms of such Indebtedness

provide that such Person is not liable therefor. For purposes of calculating Indebtedness hereunder at any time, the amount of Indebtedness of the type referred to in clause (j) above of any Person shall be equal to the payment due thereunder (giving effect to any netting agreements), if any, by such Person if such Indebtedness were terminated on such date. Additionally, (I) the Borrower's or any other Loan Party's obligations under the IDA Documents, (II) the Borrower's or any other Loan Party's obligations under the Development Documents, and (III) any deferred obligations owing to the Gaming Authorities (in the case of this clause (III), so long as such deferred obligations do not constitute indebtedness for borrowed money) shall, in each case, not be considered Indebtedness hereunder. Additionally, Indebtedness shall not include (i) any surety bonds for claims underlying mechanics liens and any reimbursement obligations with respect thereto so long as such reimbursement obligations are not then due, or are promptly paid when due, (ii) any indebtedness that has been either satisfied or discharged or defeased through covenant defeasance or legal defeasance, (iii) prepaid or deferred revenue arising in the ordinary course of business, (iv) purchase price holdbacks arising in the ordinary course of business in respect of a portion of the purchase prices of an asset to satisfy unperformed obligations of the seller of such asset and (v) earn-out obligations until such obligations become a liability on the balance sheet of such person in accordance with GAAP.

"Indemnified Taxes" shall mean (i) Taxes imposed on or with respect to any payment made or due under any Loan Document other than Excluded Taxes and (ii) Other Taxes.

"Indemnitee" shall have the meaning given in Section 9.05(b).

"Information" shall have the meaning given in Section 9.16.

"Insurance Advisor" shall mean Harbor Insurance Group, or any other Person designated from time to time by the Administrative Agent in its sole discretion, to serve as the Insurance Advisor under the Loan Documents.

"Intellectual Property" shall have the meaning set forth in the Pledge and Security Agreement.

"Intellectual Property Collateral" shall mean Intellectual Property constituting Collateral in accordance with the Security Documents.

"Intellectual Property Security Agreements" shall mean each notice of grant of security interest in, or security agreement with respect to, intellectual property executed from time to time by any Loan Party in favor of the Collateral Agent for the benefit of the Secured Parties in accordance with the Pledge and Security Agreement in order to grant Liens to the Collateral Agent for the benefit of the Secured Parties over Intellectual Property to secure all or a portion of the Obligations.

"Intercreditor Agreement" shall mean an Intercreditor Agreement, substantially in the form of Exhibit C-7, among each Loan Party, the Equity Pledgor, the Collateral Agent and the Term Loan Collateral Agent.

"Interest Coverage Ratio" shall mean, on any date, the ratio of (a) Consolidated Adjusted EBITDA for the period of four consecutive Fiscal Quarters most recently ended on or prior to such date (subject to such adjustments as are specified in Section 6.08(a)) to (b) Consolidated Cash Interest Expense for such period (subject to such adjustments as are specified in Section 6.08(a)); provided, however, that interest expense (if any) associated with the IDA Documents shall not be included for purposes of calculating Consolidated Cash Interest Expense.

"Interest Payment Date" shall mean (a) with respect to any ABR Loan, the last Business Day of each March, June, September and December and (b) with respect to any LIBOR Loan, the last day of the Interest Period applicable to such LIBOR Loan and, in the case of a LIBOR Loan with an Interest Period of more than three months' duration, each day that would have been an Interest Payment Date had successive Interest Periods of three months' duration been applicable to such LIBOR Loan. For the avoidance of doubt, no Interest Payment Date shall occur less frequently than every three months.

"Interest Period" shall mean, in connection with a LIBOR Loan, an interest period of one, two, three or six months (or, if agreed by all relevant Lenders, twelve months), as selected by the Borrower in the applicable Funding Notice or Conversion/Continuation Notice, (x) initially, commencing on the Credit Date or Conversion/Continuation Date thereof, as the case may be, and (y) thereafter, commencing on the day on which the immediately preceding Interest Period expires; provided, (a) if an Interest Period would otherwise expire on a day that is not a Business Day, such Interest Period shall expire on the next succeeding Business Day unless no further Business Day occurs in such month, in which case such Interest Period shall expire on the immediately preceding Business Day; (b) any Interest Period that begins on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the calendar month at the end of such Interest Period) shall, subject to clause (c) of this definition, end on the last Business Day of a calendar month; and (c) no Interest Period with respect to any portion of any Loans shall extend beyond the Commitment Termination Date.

"Interest Rate Determination Date" shall mean, with respect to any Interest Period, the date that is two Business Days prior to the first day of such Interest Period.

"Interest Reserve Account" shall mean the "Building Loan Interest Reserve Account" (as defined in the Building Loan Disbursement Agreement).

"Interpolated Rate" shall mean, at any time, for any Interest Period, the rate per annum determined by the Administrative Agent (which determination shall be conclusive and binding absent manifest error) to be equal to the rate that results from interpolating on a linear basis between: (a) the LIBO Screen Rate for the longest period (for which the LIBO Screen Rate is available for Dollars) that is shorter than the Impacted Interest Period and (b) the LIBO Screen Rate for the shortest period (for which the LIBO Screen Rate is available for Dollars) that exceeds the Impacted Interest Period, in each case, at such time.

"Investment" shall mean (a) any direct or indirect purchase or other acquisition by the Borrower or any other Loan Party of, or of a beneficial interest in, any of the Securities of any other Person; (b) any direct or indirect purchase or other acquisition for value, by any Loan Party

from any Person, of any Capital Stock in such Person; (c) any direct or indirect loan, advance or capital contribution by the Borrower or any other Loan Party to any other Person, including all Indebtedness and accounts receivable from that other Person that are not current assets or did not arise from sales to that other Person in the ordinary course of business; and (d) any direct or indirect purchase of all or substantially all of the assets constituting the business of a division, branch or other unit of operations from any Person. The amount of any Investment shall be the original cost of such Investment plus the cost of all additions thereto, without any adjustments for increases or decreases in value, or write-ups, write-downs or write-offs with respect to such Investment less all returns of principal or equity therein or repayments thereof.

"Investment Account" shall mean each of the accounts established under the Collateral Account Control Agreement, the Control Agreements and each other Investment Account (as defined in the Pledge and Security Agreement).

"IRS" shall mean the United States Internal Revenue Service.

"ISP98" shall mean the International Standby Practices (1998 Revision, effective January 1, 1999), International Chamber of Commerce Publication No. 590.

"Issuance/Amendment Notice" shall mean a notice in the form of Exhibit B-3 or otherwise in form and substance satisfactory to the Issuing Bank.

"Issuing Bank" shall mean Fifth Third Bank as Issuing Bank hereunder and any of its Affiliates, or any other Lender (and any of its Affiliates) appointed by the Borrower to serve as Issuing Bank hereunder with the consent of such Lender (which consent may be withheld in such Lender's sole discretion) and the Administrative Agent (such consent not to be unreasonably withheld, conditioned or delayed).

"Joint Venture" shall mean a joint venture, partnership or other similar arrangement, whether in corporate, partnership or other legal form, that is neither a Subsidiary nor an Unrestricted Subsidiary of the Borrower.

"Lead Arranger" shall mean each of Fifth Third Bank and Nomura Securities International, Inc., individually and collectively, as the context may require, in its capacity as lead arranger and book runner with respect to the Facility and its permitted successors and assigns in such capacity.

"Legal Requirements" shall mean, as to any Person, the Governing Documents of such Person, and any law, treaty, rule or regulation or determination of an arbitrator or a court or other Governmental Authority, in each case applicable to or binding upon such Person or any of its Real Property (including Gaming Laws) or personal property or to which such Person or any of its property of any nature is subject.

"Lender Addendum" shall mean, with respect to any initial Lender, a Lender Addendum substantially in the form of Exhibit H to be executed and delivered by such Lender on the date of this Agreement.

"Lenders" shall have the meaning given in the preamble to this Agreement; provided that the term "Lenders" shall include (a) any Person that delivers a Lender Addendum or any Person that has become a party hereto pursuant to an Assignment and Acceptance (in each case other than any such Person that has ceased to be a party hereto pursuant to an Assignment and Acceptance) and (b) unless the context clearly indicates otherwise, the Issuing Bank.

"Letter of Credit" shall mean a standby letter of credit issued or to be issued by Issuing Bank pursuant to Section 2.04.

"Letter of Credit Non-Reimbursed Drawings" shall mean at any time, the aggregate amount of drawings under Letters of Credit which have not then been reimbursed pursuant to Section 2.04(d).

"Letter of Credit Obligations" shall mean at any time, an amount equal to the sum of (a) the maximum aggregate amount which is, or at any time thereafter may become, available for drawing under all Letters of Credit then outstanding and (b) the Letter of Credit Non-Reimbursed Drawings at such time.

"Letter of Credit Sublimit" shall mean the lesser of (a) $10,000,000 and (b) the aggregate unused amount of the Commitments then in effect.

"LIBOR", when used in reference to any Loan or Borrowing, refers to whether such Loan or Loans comprising such Borrowing are bearing interest at a rate determined by reference to the Adjusted LIBO Rate.

"LIBO Rate" shall mean, with respect to any LIBOR Loan for any Interest Period, the rate per annum determined by the Administrative Agent, at approximately 11:00 a.m. (London time) on the date which is two (2) Business Days prior to the commencement of the relevant Interest Period by reference to the London interbank offered rate administered by ICE Benchmark Administration Limited (or any other Person that takes over the administration of such rate for Dollars) for deposits in Dollars for a period equal to such Interest Period as displayed on pages LIBOR01 or LIBOR02 of the Reuters screen that displays such rate (or, in the event such rate does not appear on a Reuters page of screen, on any successor or substitute page on such screen that displays such rate, or on the appropriate page of such other information service that publishes such rate from time to time which has been nominated by ICE Benchmark Administration Limited as an authorized information vendor for the purpose of displaying such rates as selected by the Administrative Agent in its reasonable discretion) (in each case, the "LIBO Screen Rate") provided that, to the extent that an interest rate is not ascertainable pursuant to the foregoing provision of this definition for a particular Interest Period (an "Impacted Interest Period"), "LIBO Rate" shall be the Interpolated Rate for such Interest Period; provided further that, if the LIBO Rate shall be less than zero, the LIBO Rate shall be deemed to be zero for purposes of this Agreement (other than pursuant to a Hedging Agreement, to the extent applicable, in which case this proviso shall be disregarded).

"LIBO Screen Rate" shall have the meaning given in the definition of "LIBO Rate".

"License Revocation" shall mean (a) the revocation, failure to renew or suspension of (x) any Gaming License of the Borrower or any other Loan Party or (y) the Gaming License of any other Person (other than a Secured Party) required to hold a Gaming License as a condition to any Gaming License of the Borrower or any other Loan Party if, in the case of preceding clause (x) or (y), such revocation, failure to renew or suspension could reasonably be expected to have a Material Adverse Effect (provided that nothing in this clause (a) shall be deemed a License Revocation to the extent and only for so long as any such revocation, failure to renew or suspension is subject to an appeal or proceedings for review in respect of which there shall be secured a subsisting stay of execution on such revocation, failure to renew or suspension pending such appeal or proceedings and the Loan Parties are permitted to continue to conduct their operations, taken as a whole and in all material respects, in the ordinary course of business (without any further material restrictions) during the pendency of any such appeal or proceeding for review) or (b) the appointment of a receiver, trustee or similar official by the Gaming Authorities with respect to any Loan Party or the Project.

"Lien" shall mean (i) any lien, mortgage, pledge, collateral assignment, security interest, charge or encumbrance of any kind (including any agreement to give any of the foregoing (unless such agreement is entered into in connection with the full refinancing of the Obligations under this Agreement and the obligation to give any of the foregoing takes effect substantially concurrently with or after the payment in full of the Obligations)), any conditional sale or other title retention agreement (and any lease in the nature thereof) and any option, trust or other preferential arrangement having the practical effect of any of the foregoing and (ii) in the case of Securities, any purchase option, call or similar right of a third party with respect to such Securities; provided, however, in no event shall (i) restrictions under Gaming Laws prohibiting the grant of a security interest in any Gaming License or (ii) an operating lease or an agreement to sell constitute a Lien.

"Liquidated Damages" shall mean any proceeds, liquidated damages or indemnity amounts paid pursuant to any obligation, default or breach under the Project Documents (net of costs, fees and expenses incurred by a Loan Party pursuant to arm's length transactions in connection with adjustment or settlement thereof and taxes paid with respect thereto). For purposes of this definition, amounts paid under so called "liquidated damages" insurance policies shall be deemed to be "Liquidated Damages".

"Loan" shall mean a loan made by a Lender to the Borrower pursuant to Section 2.02.

"Loan Documents" shall mean this Agreement, each Subordination Agreement (if any), the Equity Pledge Agreement, the other Security Documents, the Subsidiary Guaranty (if and when executed), the Intercreditor Agreement, the Environmental Indemnity Agreements, the Notes, the Fee Letter (solely for purposes of Section 7.01), the Subordinated Intercompany Note (if and when executed) and any other document or certificate executed by any Company or any other provider of credit support in respect of the Obligations, for the benefit of any Agent, any Lender or any other Secured Party in connection with this Agreement or any other Loan Document. For the avoidance of doubt, Hedging Agreements and Cash Management Agreements do not constitute Loan Documents.

"Loan Exposure" shall mean, with respect to any Lender, as of any date of determination, the sum of (a) the outstanding aggregate principal amount of the Loans of such Lender plus (b) such Lender's Pro Rata Share of all outstanding Letter of Credit Obligations.

"Loan Parties" shall mean the Borrower and each Subsidiary Guarantor.

"Margin Stock" shall have the meaning given in Regulation U.

"Master Association" shall mean Concord Resorts Master Association, LLC, a New York limited liability company.

"Material Adverse Effect" shall mean any change, occurrence, event, circumstance or development that has had, or could reasonably be expected to have, a material adverse effect on (a) the business, property, financial condition, operation or performance of the Loan Parties and the Project, taken as a whole, (b) the ability of the applicable Loan Parties to operate the Project in accordance with the Gaming Licenses, the Gaming License Conditions and the Gaming Laws, (c) the validity or enforceability of any of the Loan Documents or the rights and remedies of the Lead Arranger, the Agents, the Collateral Agent or the other Secured Parties thereunder, or (d) the ability of the Loan Parties (taken as a whole) or the Companies (taken as a whole) to perform their respective Obligations under the Loan Documents to which it is a party. Notwithstanding the foregoing, the granting of a gaming license by any gaming authority or the passage of any legislation approving the granting of such license, in each case, after the Closing Date to any Person in the States of New York, New Jersey or Connecticut or the opening of any other casino or gaming facility in such states shall not be or be deemed to cause a Material Adverse Effect, and shall not be taken into consideration for purposes of determining whether a Material Adverse Effect has occurred.

"Material Contract" shall mean (a) the IDA Documents, (b) the Gaming License Conditions, (c) the Development Documents or (d) any other contract or other arrangement to which a Loan Party is a party (other than the Loan Documents or contracts for the incurrence of Indebtedness), for which breach, nonperformance, cancellation or failure to renew could reasonably be expected to have a Material Adverse Effect (excluding any Project Documents).

"Material Indebtedness" shall mean any Indebtedness (other than the Loans, obligations in respect of Letters of Credit and Indebtedness permitted pursuant to Section 6.01(b)), or obligations in respect of one or more Hedging Agreements, of any one or more of the Loan Parties in an aggregate principal amount (or, with respect to Term Loan Obligations, the aggregate amount of all Commitments (as defined in the Term Loan Agreement) and Term Loans) exceeding $10,000,000. For purposes of determining Material Indebtedness, the "principal amount" of the obligations of such Persons in respect of any Hedging Agreement at any time shall be the maximum aggregate amount (giving effect to any netting agreements) that the applicable Person would be required to pay if such Hedging Agreement were terminated at such time.

"Maximum Rate" shall have the meaning given in Section 9.09.

"Minimum Collateral Amount" shall mean, at any time, (i) with respect to Cash Collateral consisting of cash or deposit account balances, an amount equal to 103% of the Fronting

Exposure of the Issuing Bank with respect to Letters of Credit issued and outstanding at such time and (ii) otherwise, an amount determined by the Administrative Agent and the Issuing Bank in their sole discretion.

"Moody's" shall mean Moody's Investors Service, Inc., a Delaware corporation, or any successor thereof.

"Mortgaged Properties" shall mean, initially, each parcel of real property and the improvements thereto owned or leased by a Loan Party and specified on Schedule 1.01(a), together with each other parcel of real property and improvements thereon with respect to which a Mortgage is granted pursuant to Section 5.11, 5.12 or 5.14. Notwithstanding the foregoing, "Mortgaged Properties" shall not include (i) any Excluded Leased Real Property and (ii) any parcel of real property that has been released from, and is not subject to, the lien of a Mortgage.

"Mortgages" shall mean (a) the Revolving Loan Mortgage, Leasehold Mortgage, Assignment of Rents and Leases, Security Agreement and Fixture Filing, substantially in the form of Exhibit C-5, effective as of the date hereof, executed and delivered by the Borrower, Empire Sub I and the IDA in favor of the Collateral Agent for the benefit of the Secured Parties, (b) the Revolving Loan Spreader Agreement, effective as of the date hereof, executed and delivered by the Borrower, Empire Sub I and Empire Sub II in favor of the Collateral Agent for the benefit of the Secured Parties and (c) each other fee or leasehold mortgages or deeds of trust, assignments of leases and rents, spreading agreements and other security documents granting a Lien on, or spreading a Lien on, any Real Property to the Collateral Agent for the benefit of the Secured Parties to secure the Obligations, each substantially in the form of Exhibit C-5 with such changes as shall be advisable under the law of the jurisdiction in which such Mortgage is to be recorded and as are reasonably satisfactory to the Administrative Agent, or otherwise in form and substance reasonably satisfactory to the Administrative Agent. Each of the above shall be referred to herein individually as a "Mortgage".

"MRMI" shall mean Monticello Raceway Management, Inc., a New York corporation.

"Multiemployer Plan" shall mean a multiemployer plan as defined in Section 3(37) or 4001(a)(3) of ERISA to which any Loan Party or any ERISA Affiliate (other than one considered an ERISA Affiliate only pursuant to subsection (m) or (o) of Code Section 414) is making or accruing an obligation to make contributions, or has within any of the preceding six plan years made or accrued an obligation to make contributions.

"Narrative Report" shall mean, with respect to the financial statements for which such narrative report is required, a narrative report describing the operations of the Borrower and its Subsidiaries in the form prepared for presentation to senior management thereof for the applicable Fiscal Quarter or Fiscal Year and for the period from the beginning of the then current Fiscal Year to the end of such period to which such financial statements relate.

"Net Cash Proceeds" shall mean:

(a) with respect to any Asset Sale made pursuant to Section 6.09(c) or in violation of Section 6.09 or any Recovery Event, the proceeds thereof in the form of Cash and Cash Equivalents (including any such proceeds subsequently received (as and when received) in respect of non-Cash consideration initially received), net of, except to the extent in each case payable to any Affiliate of the Borrower:

(i) selling expenses (including reasonable and customary closing apportionments in favor of the applicable purchaser, broker's fees or commissions, legal fees, transfer and similar taxes incurred by the Borrower or any other Loan Party in connection therewith and the Borrower's good faith estimate of taxes paid or payable by the Borrower or any other Loan Party, or distributions made or expected to be made within the following twelve months pursuant to Section 6.05(b), in connection with such sale, after taking into account any available tax credits or deductions and any tax sharing arrangements, in each case to the extent attributable to such sale);

(ii) amounts provided as a reserve, in accordance with GAAP, against any liabilities under any indemnification obligations or purchase price adjustment associated with such Asset Sale (provided that, to the extent and at the time any such amounts are released from such reserve, such amounts shall constitute Net Cash Proceeds);

(iii) the principal amount, premium or penalty, if any, interest and other amounts on any Indebtedness (or amounts required by the terms of such Indebtedness to be otherwise reinvested in other assets of each Loan Party to the extent so invested) (other than the Obligations and the Term Loan Obligations) which is secured by the asset sold in such Asset Sale or subject to such Recovery Event and (in either case) which is required to be repaid with such proceeds (other than any such Indebtedness assumed by the purchaser of such asset);

(iv) reserves for withdrawal liability or severance estimated by the Borrower to be payable arising from such Asset Sale;

(v) amounts required to be paid to any Person (other than the Borrower and the other Loan Parties) owning a beneficial interest in the subject asset; and

(vi) amounts paid in connection with securing any settlement of or payment in respect of any property or casualty insurance claim in case of a Recovery Event, including any related Taxes paid or payable or distributions made or expected to be made within the following twelve months pursuant to Section 6.05(b) in connection with such Recovery Event;

provided, however, that, if:

(A) the Borrower shall deliver a certificate of a Financial Officer or other authorized officer of the Borrower to the Administrative Agent within five (5) Business Days of receipt thereof setting forth:

(I) in the case of an Asset Sale, the Borrower's intent to reinvest such proceeds in assets of a kind then used or usable in the business of the Borrower and the other Loan Parties within 365 days of receipt of such proceeds;

(II) in the case of a Recovery Event:

(x) the Borrower's intent to apply such proceeds (the "Restoration Proceeds") to the repair, or restoration or replacement of, or remedy of such breach with respect to, the property subject to such Recovery Event within 365 days of receipt of such Restoration Proceeds or to the reimbursement of Consolidated Capital Expenditures made by a Loan Party with respect to any such repair or restoration within 90 days prior to such receipt (or, if such Restoration Proceeds relate to an event prior to the Completion Date and the application of such proceeds to Project Costs is required to achieve Completion, that such funds will be applied prior to the achievement of Final Completion (as defined in the Disbursement Agreements) in accordance with the terms of the Disbursement Agreements); and

(y) that if such Restoration Proceeds relate to an event after the Completion Date (or, if prior to the Completion Date, the relevant property was not part of the Project), the repair or restoration of, or remedy of such breach with respect to, the property subject to such Recovery Event to a condition substantially similar to the condition of such property immediately prior to the event or events to which such Recovery Event relates is technically and economically feasible within such 365-day period and that a sufficient amount of funds is or will be available to the relevant Loan Party to make such repairs and restorations, or to remedy such breach; and

(B) in the case of an Asset Sale, no Default or Event of Default shall have occurred and shall be continuing at the time of such certificate or at the proposed time of the application of such proceeds, and

(C) in the case of a Recovery Event, no Event of Default shall have occurred and shall be continuing at the time of such certificate or at the proposed time of the application of such proceeds;

then (I) in the case of an Asset Sale, such proceeds shall not constitute Net Cash Proceeds except to the extent not so reinvested at the end of such 365-day period (at which time such proceeds shall be deemed Net Cash Proceeds) and (II) in the case of a Recovery Event, such Restoration Proceeds shall not constitute Net Cash Proceeds except to the extent not so used at the end of such 365-day period (or if the Recovery Event occurs with respect to an event prior to the Completion Date and the application of such proceeds to Project Costs is required to achieve Completion, then to the extent not used prior to the achievement of Final Completion (as defined in the Disbursement Agreements) at which time, subject to the terms of the Disbursement Agreements, such Restoration Proceeds shall be deemed to be Net Cash Proceeds); and

(b) with respect to any issuance or disposition of Indebtedness, the Cash proceeds thereof, net of all taxes or distributions pursuant to Section 6.05(b) and reasonable and customary

fees, commissions, costs and other expenses incurred by the Borrower or any other Loan Party, in each case, in connection therewith.

Notwithstanding the foregoing, all proceeds of (i) so-called "business interruption" policies and (ii) Specified FF&E Collateral (as defined in the Term Loan Agreement) shall not be Net Cash Proceeds.

"Non-Consenting Lender" shall have the meaning given in Section 2.22.

"Non-Defaulting Lender" shall mean, at any time, each Lender that is not a Defaulting Lender at such time.

"Note" shall mean a promissory note in the form of Exhibit A.

"Obligations" shall mean all obligations of every nature of any Company from time to time owed to the Agents, the Lead Arranger (including former Agents or Lead Arranger), the Lenders or the other Secured Parties or any of them under any Loan Document or Specified Cash Management Agreement, whether for principal, interest (including interest which, but for the filing of a petition in bankruptcy with respect to any Company would have accrued on any Obligation, whether or not a claim is allowed against any Company for such interest in the related bankruptcy proceeding), reimbursement of amounts drawn under Letters of Credit, payments for early termination of Specified Cash Management Agreements, Fees, expenses, indemnification or otherwise, and shall include (x) all interest accrued or accruing (or which would, absent commencement of a proceeding under any Debtor Relief Law, accrue) in accordance with the rate specified in the relevant Loan Document and (y) all fees, costs and charges incurred in connection with the Loan Documents and provided for thereunder, in the case of each of clause (x) and clause (y) whether before or after commencement of a proceeding under any Debtor Relief Law, and irrespective of whether any claim for such interest, fees, costs or charges is allowed as a claim in a proceeding under any Debtor Relief Law.

"On-Site Cash" shall mean amounts held in Cash on-site at the Project (including cage cash) in connection with the ordinary course of operations thereof.

"Other Connection Taxes" shall mean, with respect to any Recipient, Taxes imposed as a result of a present or former connection between such Recipient and the jurisdiction imposing such Tax (other than connections arising from such Recipient having executed, delivered, become a party to, performed its obligations under, received payments under, received or perfected a security interest under, engaged in any other transaction pursuant to or enforced any Loan Document, or sold or assigned an interest in any Loan, Commitment or Loan Document).

"Other Taxes" shall mean any and all present or future stamp, court or documentary, intangible, recording, filing or similar taxes or any other excise or property taxes, charges or similar levies (including interest, fines, penalties and additions to tax) arising from any payment made or the receipt or perfection of a security interest under any Loan Document or from the execution, delivery, performance or enforcement of, or otherwise with respect to, any Loan Document, except, in each case, any such taxes, charges or similar levies (including interest, fines, penalties and

additions to tax) that are Other Connection Taxes imposed with respect to an assignment (other than an assignment pursuant to Section 2.20 or Section 2.22).

"Participant" shall have the meaning given in Section 9.04(b).

"Participant Register" shall have the meaning given in Section 9.04(b).

"Pass Through Entity" shall mean any of (a) a grantor trust for federal and state income tax purposes or (b) an entity treated as a partnership, S corporation or a disregarded entity for U.S. federal and applicable state income tax purposes.

"Patriot Act" shall have the meaning given in Section 3.29.

"PBGC" shall mean the Pension Benefit Guaranty Corporation established pursuant to Subtitle A of Title IV of ERISA and any successor entity performing similar functions.

"Permits" shall mean any and all franchises, licenses (including Gaming Licenses), certificates of occupancy, leases, permits, approvals, notifications, certifications, registrations, authorizations, exemptions, qualifications, easements, rights of way, Liens and other rights, privileges and approvals required under any Legal Requirement (including Environmental Laws).

"Permitted Equity Contributions" shall mean, on any date, the cumulative amount of Cash and Cash Equivalents received on or prior to such date from any equity issuance by, or capital contribution to, the Borrower (other than Disqualified Capital Stock, Specified Equity Contributions, payments made under the Completion Guaranty (as defined in the Term Loan Agreement), amounts required to be contributed pursuant to either Disbursement Agreement, amounts utilized pursuant to clause (c) of the definition of Available Amount, Required Equity Contributions, amounts applied to Project Costs and other amounts previously applied for purposes other than use in the Permitted Equity Contribution Amount), which amounts the Borrower shall have within three (3) Business Days of receipt thereof designated to the Administrative Agent in writing as "Permitted Equity Contributions".

"Permitted Equity Contribution Amount" shall mean, on any date, an amount equal to (a) the aggregate cumulative amount of Permitted Equity Contributions; *minus* (b) the aggregate amount of any (i) Investments made pursuant to Section 6.07(q), and (ii) Consolidated Capital Expenditures made with Permitted Equity Contributions pursuant to Section 6.08(c)(i), in each case, made since the Full Opening Date and on or prior to such date.

"Permitted Holders" shall mean (i) Mr. Tan Sri Lim Kok Thay and any member of the Family Group of Mr. Tan Sri Lim Kok Thay, (ii) Kien Huat Realty III Limited, (iii) Genting Berhad, (iv) Genting Malaysia Berhad, and (v) Genting Hong Kong Limited.

"Permitted Liens" shall mean each of the Liens permitted pursuant to Section 6.02.

"Permitted Refinancing Indebtedness" shall mean Indebtedness issued or incurred (including by means of the extension or renewal of existing Indebtedness) to refinance, refund, extend, renew or replace existing Indebtedness ("Refinanced Indebtedness"); provided that (a) the

principal amount of such refinancing, refunding, extending, renewing or replacing Indebtedness is not greater than the principal amount of such Refinanced Indebtedness plus the amount of any premiums or penalties and accrued and unpaid interest paid thereon and original issue discount on such refinancing, refunding, extending, renewing or replacing Indebtedness and fees and expenses, in each case associated with such refinancing, refunding, extension, renewal or replacement, (b) such refinancing, refunding, extending, renewing or replacing Indebtedness has a final maturity that is no sooner than, and in the case of term Indebtedness a Weighted Average Life to Maturity that is no shorter than, such Refinanced Indebtedness, (c) if such Refinanced Indebtedness or any Guarantees thereof are subordinated to the Obligations, such refinancing, refunding, extending, renewing or replacing Indebtedness and any Guarantees thereof remain, in the reasonable good faith determination of the Borrower, so subordinated on terms no less favorable to the Lenders, (d) the obligors in respect of such Refinanced Indebtedness immediately prior to such refinancing, refunding, extending, renewing or replacing are the only obligors on such refinancing, refunding extending, renewing or replacing Indebtedness, (e) such refinancing, refunding, extending, renewing or replacing Indebtedness does not, in the reasonable good faith determination of the Borrower, contain covenants, terms, conditions or events of default which, when taken as a whole, are materially adverse and/or materially more burdensome to the Borrower or the applicable Loan Party and the Lenders in comparison to the covenants, terms, conditions or events of default, taken as a whole, in respect of such Refinanced Indebtedness (other than, in each case, the economic terms thereof (including the interest rate)); provided that a certificate of the Borrower delivered to the Administrative Agent at least three Business Days prior to the incurrence of such Indebtedness, together with a reasonably detailed description of the material covenants, terms, conditions and events of default of such Indebtedness or drafts of the documentation relating thereto, stating that the Borrower has reasonably determined in good faith that such covenants, terms, conditions and events of default satisfy the foregoing requirement shall be conclusive evidence that such covenants and defaults satisfy the foregoing requirement unless the Administrative Agent notifies the Borrower within such three Business Day period that it disagrees with such determination (including a reasonably detailed description of the basis upon which it disagrees) and (f) in the case of a refinancing of Indebtedness under Section 6.01(p), such refinancing, refunding, extending, renewing or replacing Indebtedness contains provisions substantially similar to Section 2.13(e) of the Term Loan Agreement and the relevant holders (or agent or other representative of such holders) of such refinancing, refunding, extending, renewing or replacing Indebtedness becomes party to the Intercreditor Agreement, if and to the extent such Permitted Refinancing Indebtedness is secured.

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

"Plans and Specifications" shall have the meaning given in the Building Loan Disbursement Agreement.

"Pledge and Security Agreement" shall mean the Pledge and Security Agreement, substantially in the form of Exhibit C-2, dated as of the date hereof, among each Loan Party and the Collateral Agent.

"Pledged Collateral" shall mean the "Pledged Equity Interests" as defined in the Pledge and Security Agreement, and the "Pledged Collateral", as defined in the Equity Pledge Agreement.

"Presumed Tax Rate" shall mean the highest combined marginal federal, state and local income tax rate for the relevant taxable year of a corporation doing business in New York, taking into account the federal income tax deduction for such state and local income taxes). In determining the Presumed Tax Rate, the character of the items of income and gain comprising Taxable Income (e.g., ordinary income or long-term capital gain) and any applicable preferential tax rates shall be taken into account.

"Prime Rate" shall mean, on any day, the rate of interest announced by Fifth Third Bank from time to time as its "prime rate" as in effect on such day. The prime rate is a rate set by Fifth Third Bank based upon various factors including Fifth Third Bank's costs and desired return, general economic conditions and other factors, and is used as a reference point for pricing some loans, which may be priced at, above or below such rate. The Borrower acknowledges that such rate may not be Fifth Third Bank's best or lowest rate and that Fifth Third Bank may, from time to time, make commercial loans or other loans at rates of interest at, above or below the Prime Rate.

"Principal Office" shall mean, for each of the Administrative Agent and the Issuing Bank, such Person's "Principal Office" as set forth on Appendix A, or such other office as such Person may from time to time designate in writing to the Borrower, the Administrative Agent and each Lender.

"Proceedings" shall mean any action, suit, proceeding (whether administrative, judicial or otherwise), governmental investigation or arbitration against any Company or affecting any Property of such Person.

"Project" shall have the meaning given in the recitals to this Agreement.

"Project Costs" shall mean the "Building Loan Costs" (as defined in the Building Loan Disbursement Agreement) and the "Project Costs" (as defined in the Project Disbursement Agreement) and shall include, for purposes of clarification, the payments of licensing fees to the Gaming Authorities in an aggregate amount not to exceed $51,000,000 for the issuance of, or application for, the Borrower's Gaming License.

"Project Documents" shall have the meaning given in the Disbursement Agreements.

"Project Disbursement Agreement" shall have the meaning given in the Term Loan Agreement.

"Property" shall mean any right or interest in or to property of any kind whatsoever, whether real, personal or mixed and whether tangible or intangible, including Capital Stock.

"Pro Rata Share" shall mean with respect to all payments, computations and other matters relating to the Commitment or Loans of any Lender or any Letters of Credit issued or

participations purchased therein by any Lender, the percentage obtained by dividing (a) the Commitment of that Lender by (b) the aggregate Commitments of all Lenders; provided that if the Commitments have then expired or been terminated, the Pro Rata Share of the Lenders shall be determined based upon the Loan Exposure of such Lenders. For all other purposes with respect to each Lender, "Pro Rata Share" shall mean the percentage obtained by dividing (A) an amount equal to the Aggregate Exposure of that Lender, by (B) an amount equal to the sum of the Aggregate Exposure of all Lenders.

"Purchase Option Agreement" shall mean that certain Purchase Option Agreement, dated as of December 28, 2015, by and among EPT Sub, EPR Sub, Adelaar Developer, and the Borrower, and the Borrower, as amended by that certain First Amendment to Purchase Option Agreement, dated as of January 19, 2017, by and among EPT Sub, EPR Sub, Adelaar Developer, and the Borrower.

"Qualified Capital Stock" shall mean Capital Stock that is not Disqualified Capital Stock.

"Qualified ECP Guarantor" shall have the meaning given to such term in the Pledge and Security Agreement.

"Real Property" shall mean all Mortgaged Property and all other real property owned or leased from time to time by any Loan Party and, to the extent provided in, and solely for the purposes of, Section 3.17 and Section 5.09, any Unrestricted Subsidiary.

"Recipient" shall mean (a) the Administrative Agent, (b) any Lender and (c) the Issuing Bank, as applicable.

"Recovery Event" shall mean any settlement of or payment in respect of any property or casualty insurance claim (other than a settlement in respect of business interruption insurance or other similar insurance proceeds covering the loss of revenues and extra expenses), any Liquidated Damages, or any taking under power of eminent domain or by condemnation or similar proceeding of or relating to any property or asset of the Borrower or any other Loan Party; provided that any such event or series of related events causing damage or destruction resulting in the payment of insurance proceeds (or Liquidated Damage payments or tax or other refunds, as applicable) in an amount, or a taking of property having value, not in excess of $1,000,000 in the aggregate for all such events in any Fiscal Year shall not be deemed a Recovery Event for purposes of this Agreement.

"Register" shall have the meaning given in Section 2.06(b).

"Regulation D" shall mean Regulation D of the Board as from time to time in effect and all offered rulings and interpretations thereunder and thereof.

"Regulation T" shall mean Regulation T of the Board as from time to time in effect and all official rulings and interpretations thereunder or thereof.

"Regulation U" shall mean Regulation U of the Board as from time to time in effect and all official rulings and interpretations thereunder or thereof.

"Regulation X" shall mean Regulation X of the Board as from time to time in effect and all official rulings and interpretations thereunder or thereof.

"Regulatory Cash Amount" shall mean the Borrower's good faith estimate of the amount of cash it needs to reserve from any payment pursuant to Section 2.13(c) in order to maintain at the Project an amount of cash necessary to be, and remain, in compliance with all applicable requirements under Gaming Laws (after taking into account cash available for such purpose) related to "cage cash" and other On-Site Cash.

"Reimbursement Date" shall have the meaning given in Section 2.04(d).

"Related Parties" shall mean, with respect to any specified Person, such Person's Affiliates, successors and assigns and the respective partners, trustees, members, controlling persons, directors, officers, employees, agents and advisors of such Person and such Person's Affiliates, successors and assigns.

"Release" shall mean any release, spill, seepage, emission, leaking, pumping, injection, pouring, emptying, deposit, disposal, discharge, dispersal, dumping, escaping or leaching into or through the environment or within or upon any building, structure, facility or fixture.

"Relevant Four Fiscal Quarter Period" shall have the meaning given in Section 7.03.

"Replacement Lender" shall have the meaning given in Section 2.22.

"Required Equity Contribution" shall have the meaning given in the Term Loan Agreement.

"Required Lenders" shall mean, at any time of determination, one or more Lenders (other than Defaulting Lenders) collectively having or holding Aggregate Exposure representing more than 50% of the Aggregate Exposure of all Lenders at such time. The Aggregate Exposure of any Defaulting Lender shall be disregarded in determining Required Lenders at any time. Notwithstanding the foregoing, to the same extent set forth in Section 9.04(g), the portion of a Lender's Loan Exposure, held or deemed held by any Disqualified Institution shall be excluded for purposes of making a determination of Required Lenders.

"Required Prepayment Percentage" shall mean (a) in the case of any Asset Sale or Recovery Event, 100%; (b) in the case of any issuance or other incurrence of Indebtedness for borrowed money, 100%; and (c) in the case of any Consolidated Excess Cash Flow, (i) 75% or (ii) if on the last day of the most recently ended Fiscal Quarter the First Lien Leverage Ratio as of such last day is less than 2.75 to 1.00, 50%.

"Responsible Officer" of any Person shall mean any executive officer or Financial Officer of such Person and any other officer or similar official thereof responsible for the administration of the obligations of such Person in respect of this Agreement.

"Restoration Proceeds" shall have the meaning given in the definition of "Net Cash Proceeds".

"Restricted Junior Payment" shall mean (a) any dividend or other distribution, direct or indirect, on account of any shares of any class of equity (including Capital Stock and preferred equity) of the Borrower, now or hereafter outstanding, except a dividend payable solely in shares of that class of equity to the holders of that class; (b) any redemption, retirement, sinking fund or similar payment, purchase or other acquisition for value, direct or indirect, of any shares of any class of equity (including Capital Stock and preferred equity) of the Borrower, now or hereafter outstanding; (c) any payment made to retire, or to obtain the surrender of, any outstanding warrants, options or other rights to acquire shares of any class of equity (including Capital Stock and preferred equity) of the Borrower, now or hereafter outstanding; (d) advisory, management, consulting, oversight or similar fees payable to any Affiliate of any Loan Party (in each case other than to a Loan Party) (which shall not include, for avoidance of doubt, fees payable pursuant to any joint marketing, cross marketing, procurement, branding or licensing agreement); and (e) any payment or prepayment of principal of, premium, if any, or interest on, or redemption, purchase, retirement, defeasance (including in substance or legal defeasance), sinking fund or similar payment with respect to any subordinated indebtedness (in each case other than as payable to a Loan Party or, in the case of payments or prepayments of Obligations made in accordance with the Loan Documents, to a Lender) (including any Subordinated Indebtedness).

"S&P" shall mean Standard & Poor's Ratings Group, Inc., a New York corporation, or any successor thereof.

"Sanctioned Country" shall mean, at any time, a country or territory that is subject to comprehensive Sanctions (currently Crimea, Cuba, Iran, North Korea, Sudan and Syria).

"Sanctioned Person" shall mean, at any time, (a) any Person listed in any Sanctions-related list of designated Persons maintained by the Office of Foreign Assets Control of the U.S. Department of the Treasury or the U.S. Department of State, (b) any Person located, organized or resident in a Sanctioned Country or (c) any Person 50% or more individually or in the aggregate owned by any Person described in clause (a).

"Sanctions" shall mean economic or financial sanctions or trade embargoes imposed, administered or enforced from time to time by the U.S. government, including those administered by the Office of Foreign Assets Control of the U.S. Department of the Treasury or the U.S. Department of State.

"Scheduled Maturity Date" shall mean January 24, 2022.

"SEC" shall mean the Securities and Exchange Commission or any successor thereof.

"Secured Parties" shall mean the Lead Arranger, the Agents, the Lenders, the Issuing Bank and the Specified Cash Management Counterparties and shall include all former Lead Arranger, Agents, Lenders, Issuing Banks and Specified Cash Management Counterparties (including each co-agent, sub-agent and attorney-in-fact appointed by the Agents from time to time

pursuant to Article VIII) to the extent that any Obligations owing to such Persons were incurred while such Persons were a Lead Arranger, Agent, Lender, Issuing Bank or Specified Cash Management Counterparty (including co-agents, sub-agents and attorneys-in-fact appointed by the Agents from time to time pursuant to Article VIII) and such Obligations have not been paid in full.

"Securities" shall mean any stock, shares, partnership interests, voting trust certificates, certificates of interest or participation in any profit sharing agreement or arrangement, options, warrants, bonds, debentures, notes, or other evidences of indebtedness, secured or unsecured, convertible, subordinated or otherwise, or in general any instruments commonly known as "securities" or any certificates of interest, shares or participations in temporary or interim certificates for the purchase or acquisition of, or any right to subscribe to, purchase or acquire, any of the foregoing.

"Securities Act" shall mean the Securities Act of 1933, as amended from time to time, and any successor statute.

"Security Documents" shall mean the Pledge and Security Agreement, the Equity Pledge Agreement, the Control Agreements, the Mortgages, the Assignments of Leases and Rents, the Intellectual Property Security Agreements, the Consents and each of the other security agreements, pledges, mortgages, consents and other instruments and documents executed and delivered pursuant to any of the foregoing, or pursuant to Section 5.11, Section 5.12 or Section 5.14 or that otherwise are intended or purport to grant Liens to the Collateral Agent for the benefit of the Secured Parties to secure all or a portion of the Obligations.

"Senior Permitted Liens" shall mean each of the following: (a) Permitted Liens granted or permitted under Section 6.02(b), Section 6.02(c), Section 6.02(d), Section 6.02(e), Section 6.02(f), Section 6.02(g), Section 6.02(h), Section 6.02(i), Section 6.02(j), Section 6.02(l), Section 6.02(m), Section 6.02(n), Section 6.02(o) (with respect to the IDA Lease Agreement), Section 6.02(q), Section 6.02(t), Section 6.02(u), Section 6.02(v), Section 6.02(x) (which are equal and ratable with the Liens securing the Obligations), Section 6.02(z), Section 6.02(aa) and Section 6.02(cc) as applicable, and (b) with respect to Mortgaged Property, Permitted Liens set forth in a title policy delivered pursuant to Section 4.01(l), Section 5.11 or Section 5.12. Notwithstanding the foregoing, the foregoing Liens (other than under Section 6.02(x)) shall be deemed Senior Permitted Liens only to the extent given priority over the Lien created under the Loan Documents pursuant to applicable law or pursuant to documentation or instruments entered into by the Administrative Agent or the Collateral Agent in accordance with Section 8.09(a).

"Solvency Certificate" shall mean a Solvency Certificate of the Borrower substantially in the form of Exhibit D.

"Solvent" shall mean, with respect to any Person, that as of the date of determination, both (a) (i) the sum of such Person's debt (including contingent liabilities) does not exceed the present fair saleable value of such Person's present assets on a going concern basis; (ii) such Person's capital is not unreasonably small in relation to its business (in the case of any Loan Party, as contemplated on the Closing Date and reflected in the projections provided to the Lead Arranger and the Administrative Agent pursuant to Section 4.01(i) or with respect to any transaction

contemplated or undertaken after the Closing Date); and (iii) such Person has not incurred and does not intend to incur, or believe (nor should it reasonably believe) that it will incur, debts beyond its ability to pay such debts as they become due (whether at maturity or otherwise); and (b) such Person is "solvent" within the meaning given that term and similar terms under applicable laws relating to fraudulent transfers and conveyances. For purposes of this definition, the amount of any contingent liability at any time shall be computed as the amount that, in light of all of the facts and circumstances existing at such time, represents the amount that can reasonably be expected to become an actual or matured liability (irrespective of whether such contingent liabilities meet the criteria for accrual under Statement of Financial Accounting Standard No. 5).

"Specified Cash Management Agreement" shall mean any Cash Management Agreement entered into by (a) the Borrower or any other Loan Party and (b) any Agent, the Lead Arranger, any Lender or an Affiliate of any Agent, the Lead Arranger or any Lender, in each case at the time of entering into such Cash Management Agreement (even if such Person subsequently ceases to be an Agent, the Lead Arranger, a Lender or an Affiliate of an Agent, the Lead Arranger or any Lender) (each a " Specified Cash Management Counterparty"); provided, that (i) the designation of any Cash Management Agreement as a Specified Cash Management Agreement (which shall be so designated in writing to the Administrative Agent by the Borrower or the applicable Specified Cash Management Counterparty) shall not alone create in favor of a Specified Cash Management Counterparty any rights in connection with the management or release of any Collateral or Obligations under the Loan Documents; (ii) as a condition to any Cash Management Agreement being designated as a Specified Cash Management Agreement, the applicable Specified Cash Management Counterparty(ies) shall be deemed to have appointed the Administrative Agent as its agent under the applicable Loan Documents and agreed to be bound by the provisions of Article VIII in favor of the Agents as if it were a Lender, including Section 8.03 and Section 8.07, and shall have been deemed to have made the representations and warranties set forth in Section 8.06 in favor of the Agents; and (iii) any Cash Management Agreement with a Specified Cash Management Counterparty may be designated as a Specified Cash Management Agreement hereunder but shall not constitute a "Specified Cash Management Agreement" (or similar term) under the Term Loan Facility.

"Specified Cash Management Counterparty" has the meaning given in the definition of Specified Cash Management Agreement.

"Specified Equity Contribution" has the meaning given in Section 7.03.

"Sponsor" shall mean the Permitted Holders and, in each case, any Affiliates thereof.

"Statutory Reserves" shall mean a fraction (expressed as a decimal), the numerator of which is the number one and the denominator of which is the number one minus the aggregate of the maximum reserve percentages (including any marginal, special, emergency or supplemental reserves) expressed as a decimal established by the Board and any other banking authority, domestic or foreign, to which the Administrative Agent or any Lender (including any branch, Affiliate or other fronting office making or holding a Loan) is subject for eurocurrency funding (currently referred to as "Eurocurrency Liabilities" in Regulation D of the Board). LIBOR Loans shall be deemed to constitute eurocurrency funding and to be subject to such reserve requirements without

benefit of or credit for proration, exemptions or offsets that may be available from time to time to any Lender under such Regulation D or any comparable regulation. Statutory Reserves shall be adjusted automatically on and as of the effective date of any change in any reserve percentage.

"Subject Date" has the meaning given in Section 7.03.

"Subordinated Indebtedness" shall mean Indebtedness of any Loan Party that (a) does not have any scheduled or other required principal payment, mandatory principal prepayment, sinking fund payment, interest payment, fee payment or similar payment due prior to one hundred eighty (180) days after the latest Scheduled Maturity Date, (b) is not secured by any Lien on any Property and (c) is subordinated to the Obligations pursuant to a Subordination Agreement.

"Subordinated Intercompany Note" shall mean an Intercompany Subordinated Demand Promissory Note, dated as of the date first required to be executed pursuant to Section 5.11, substantially in the form of Exhibit M, among each of the Loan Parties.

"Subordination Agreement" shall mean each Subordination Agreement, substantially in the form of Exhibit N, among the Administrative Agent, the Term Loan Administrative Agent, the applicable Loan Parties and the providers of any Subordinated Indebtedness.

"Subsidiary" shall mean, with respect to any Person, any corporation, partnership, limited liability company, association, joint venture or other business entity of which more than 50% of the total voting power of shares of stock or other ownership interests entitled (without regard to the occurrence of any contingency) to vote in the election of the Person or Persons (whether directors, managers, trustees or other Persons performing similar functions) having the power to direct or cause the direction of the management and policies thereof is at the time owned or controlled, directly or indirectly, by that Person or one or more of the other Subsidiaries of that Person or a combination thereof; provided, in determining the percentage of ownership interests of any Person Controlled by another Person, no ownership interest in the nature of a "qualifying share" of the former Person shall be deemed to be outstanding. Notwithstanding the foregoing (and except for purposes of the definition of Unrestricted Subsidiary contained herein), an Unrestricted Subsidiary shall be deemed not to be a Subsidiary of the Borrower or any of its other Subsidiaries for purposes of this Agreement or any other Loan Document.

"Subsidiary Guarantor" shall mean each Subsidiary of the Borrower that has executed (whether by counterpart, joinder or otherwise) the Subsidiary Guaranty and the Pledge and Security Agreement pursuant to Section 5.11; provided that any Person constituting a Subsidiary Guarantor as described above shall cease to constitute a Subsidiary Guarantor when it is released from the Subsidiary Guaranty and the Pledge and Security Agreement, in accordance with the terms hereof and thereof.

"Subsidiary Guaranty" shall mean the Subsidiary Guaranty, dated as of the date hereof, substantially in the form of Exhibit C-1, made by each Subsidiary Guarantor and the Borrower.

"Successor Company" has the meaning given in Section 6.09(a).

"Tax" shall mean any present or future tax, levy, impost, duty, assessment, charge, fee, deduction or withholding of any nature (including interest, penalties and additions thereto) and whatever called, by any Governmental Authority, on whomsoever and wherever imposed, levied, collected, withheld or assessed.

"Tax Amount" shall mean, with respect to any taxable year (or portion thereof) for which the Borrower is a Pass Through Entity or a member of consolidated, combined or unitary tax group of which a direct or indirect owner of the Borrower is the common parent, an amount equal to the product of (a) the Taxable Income of the Borrower and its Subsidiaries that are Pass Through Entities whose income is allocable to the Borrower or who are members of such consolidated, combined or unitary group, treating the Borrower and such Subsidiaries as a single company for this purpose, for such taxable year (or portion thereof) and (b) the Presumed Tax Rate, reduced by any Taxes paid or payable with respect to such Taxable Income directly by the Borrower or any of its Subsidiaries that are Pass Through Entities whose income is allocable to the Borrower or who are members of such consolidated, combined or unitary group, treating the Borrower and such Subsidiaries as a single company for this purpose.

"Tax Code" shall mean the Internal Revenue Code of 1986.

"Taxable Income" shall mean, with respect to any taxable year or portion thereof, an amount equal to (1) the net income and/or (without duplication) net gain of the Borrower and its Subsidiaries that are Pass Through Entities whose income is allocable to the Borrower or who are members of a consolidated, combined or unitary tax group of which a direct or indirect owner of the Borrower is the common parent for U.S. federal income tax purposes for such taxable year or portion thereof, reduced, without duplication and not below zero, by (2) the sum of (i) the cumulative net loss and/or net capital loss of the Borrower and such Subsidiaries for federal income tax purposes with respect to prior tax periods, not previously taken into account hereunder (collectively, "Prior Losses") and (ii) to the extent not previously taken into account hereunder, the $59,800,000 of net operating loss carryforwards of Empire that are not subject to limitation under Section 382 of the Tax Code as of December 31, 2015 (the "Empire Losses"); provided, that any such Prior Losses or Empire Losses shall be taken into account only to the extent that the Borrower's direct or indirect owners (or the consolidated, combined or unitary tax group of which the Borrower is a member) would be permitted under the Tax Code to deduct such Prior Losses or Empire Losses against the net income and/or net gain of the Borrower and such Subsidiaries that is allocated to them, or required to be taken into account by the consolidated, combined or unitary tax group, as applicable, for such taxable year or portion thereof (i.e., giving effect to any applicable limitations under the Tax Code, including the limitation on using net capital loss to offset ordinary income, limitations under Section 382 of the Tax Code, time period limitations with respect to the use of loss carryforwards, limitations under the alternative minimum tax, etc.), provided, however, for this purpose, the Empire Losses shall be assumed to be only usable against net income and/or net gain of the Borrower and such Subsidiaries for U.S. federal income tax purposes and any actual utilization of the Empire Losses due to net income and/or net gain of a member of the Empire U.S. federal

consolidated group other than the Borrower or such Subsidiaries shall be disregarded (solely for purposes of determining Taxable Income hereunder).

"Term Facility Documents" shall mean the "Loan Documents" (or any similar term) as defined in the Term Loan Agreement.

"Term Loan" shall mean any term loan made pursuant to Section 2.01 of the Term Loan Agreement and any term loan made under any Permitted Refinancing Indebtedness.

"Term Loan Administrative Agent" shall mean Credit Suisse AG, Cayman Islands Branch, as administrative agent under the Term Loan Facility and any successor thereto in such capacity or any other Person in a similar capacity under any Permitted Refinancing Indebtedness.

"Term Loan Agreement" shall have the meaning given in the definition of Term Facility and shall include any similar or replacement agreement pursuant to any Permitted Refinancing Indebtedness.

"Term Loan Collateral Agent" shall mean Credit Suisse AG, Cayman Islands Branch, as collateral agent under the Term Loan Facility and any successor thereto in such capacity or any other Person in a similar capacity under any Permitted Refinancing Indebtedness.

"Term Loan Facility" shall mean the term loan facility under that certain Building Term Loan Agreement, dated as of January 24, 2017 (as amended, amended and restated, supplemented, refinanced, replaced or otherwise modified from time to time), by and among the Borrower, Credit Suisse AG, Cayman Islands Branch, as administrative agent (and any successor thereto in such capacity), and the banks, financial institutions and other entities from time to time party thereto as lenders (the "Term Loan Agreement"), and any Permitted Refinancing Indebtedness.

"Term Loan Obligations" shall have the meaning given to the term "Obligations" in the Term Loan Agreement.

"Terminated Lender" shall have the meaning given in Section 2.22.

"Title Company" shall have the meaning given in Section 4.01(l).

"Total Utilization of Commitments" shall mean, as at any date of determination, the sum of (a) the aggregate principal amount of all outstanding Loans (other than Loans made for the purpose of reimbursing the Issuing Bank for any amount drawn under any Letter of Credit, but not yet so applied) and (b) the aggregate Letter of Credit Obligations.

"Trade Date" shall have the meaning given in Section 9.04(g)(i).

"Transactions" shall mean, collectively, (a) the execution, delivery and performance by the Companies of the Loan Documents and the Term Facility Documents to which they are a party, (b) the borrowings and the issuance of Letters of Credit hereunder and under the Term Loan Agreement, and the use of proceeds of each of the foregoing and (c) the granting of Liens pursuant to the Security Documents and the Term Facility Documents.

"Type of Loan" shall mean an ABR Loan or a LIBOR Loan.

"UCC" shall mean the Uniform Commercial Code, as in effect from time to time in any jurisdiction.

"Uniform Customs" shall mean the Uniform Customs and Practice for Documentary Credits (2007 Revision), effective July, 2007 International Chamber of Commerce Publication No. 600.

"Unrestricted Subsidiary" shall mean any Subsidiary of the Borrower that is (i) acquired or created after the Closing Date and (ii) designated by the Borrower as an Unrestricted Subsidiary hereunder by written notice to the Administrative Agent at the time that such Subsidiary is created or acquired; provided that the Borrower shall only be permitted to so designate such Subsidiary as an Unrestricted Subsidiary after the Closing Date so long as (a) no Default or Event of Default then exists or would result therefrom, (b) such Unrestricted Subsidiary does not own any Equity Interests in, or have any Lien on any property of, the Borrower or any Subsidiary of the Borrower, other than a Subsidiary of the Unrestricted Subsidiary, (c) any Indebtedness and other obligations of such Unrestricted Subsidiary are not recourse to the Borrower or any of its Subsidiaries (other than Unrestricted Subsidiaries) or to any of their respective assets, (d) all of the provisions of Section 6.15 shall have been complied with in respect of such newly-designated Unrestricted Subsidiary, (e) such Unrestricted Subsidiary has been designated as an "Unrestricted Subsidiary" under the Term Loan Agreement and (f) such Unrestricted Subsidiary shall be capitalized (to the extent capitalized by the Borrower or any of its Subsidiaries) through Investments as permitted by, and in compliance with, Section 6.07 and with any assets owned by such Unrestricted Subsidiary at the time of the initial designation thereof to be treated as Investments in such Unrestricted Subsidiary pursuant to Section 6.07.

"U.S. Tax Compliance Certificate" shall have the meaning given in Section 2.19(e).

"Weighted Average Life to Maturity" shall mean, when applied to any Indebtedness at any date, the number of years obtained by dividing: (a) the sum of the products obtained by multiplying (i) the amount of each then remaining installment, sinking fund, serial maturity or other required payments of principal, including payment at final maturity, in respect thereof, by (ii) the number of years (calculated to the nearest one-twelfth) that will elapse between such date and the making of such payment; by (b) the then outstanding principal amount of such Indebtedness.

"wholly owned Subsidiary" of any Person shall mean a subsidiary of such Person of which securities (except for directors' qualifying shares) or other ownership interests representing 100% of the Capital Stock are, at the time any determination is being made, owned, Controlled or held by such Person or one or more wholly owned Subsidiaries of such Person or by such Person and one or more wholly owned Subsidiaries of such Person.

"Withdrawal Liability" shall mean liability to a Multiemployer Plan as a result of a complete or partial withdrawal from such Multiemployer Plan, as such terms are defined in Part I of Subtitle E of Title IV of ERISA.

"Write-Down and Conversion Powers" shall mean, with respect to any EEA Resolution Authority, the write-down and conversion powers of such EEA Resolution Authority from time to time under the Bail-In Legislation for the applicable EEA Member Country, which write-down and conversion powers are described in the EU Bail-In Legislation Schedule.

Section 1.02. Terms Generally. The definitions in Section 1.01 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. The words "include", "includes" and "including", and words of similar import, shall not be limiting and shall be deemed to be followed by the phrase "without limitation". The word "will" shall be construed to have the same meaning and effect as the word "shall". The words "herein", "hereof" and "hereunder", and words of similar import, shall be construed to refer to this Agreement in its entirety and not to any particular provision of this Agreement unless the context shall otherwise require. The word "or" is not exclusive. Unless the context otherwise requires, the expressions "payment in full," "paid in full" and any other similar terms or phrases when used with respect to the Obligations, the Secured Obligations (as defined in the Security Documents), the Guaranteed Obligations (as defined in the Subsidiary Guaranty) or the Senior Obligations (as defined in any agreement subordinating the Indebtedness of a Loan Party to the Obligations), shall mean the termination of all the Commitments, payment in full, in Cash, of all of the Obligations (other than any unasserted contingent reimbursement or indemnity obligations and other than Obligations in respect of Letters of Credit that have been Cash Collateralized (in an amount not less than the Minimum Collateral Amount) pursuant to the terms of this Agreement), the cancellation or expiration of all Letters of Credit (other than Letters of Credit that have been Cash Collateralized (in an amount not less than the Minimum Collateral Amount) pursuant to the terms of this Agreement) and the payment in full of all of the obligations under the Specified Cash Management Agreements (other than obligations under the Specified Cash Management Agreements not then due and payable and that do not become due and payable as a result of the payment in full of the other Obligations). All references herein to Articles, Sections, Appendices, Exhibits and Schedules shall be deemed references to Articles and Sections of, and Exhibits, Appendices and Schedules to, this Agreement unless the context shall otherwise require. In the computation of periods of time from a specified date to a later specified date, the word "from" means "from and including;" the words "to" and "until" each mean "to but excluding;" and the word "through" means "to and including". Unless expressly described to the contrary, references to (a) any document, instrument or agreement (i) shall include all exhibits, schedules and other attachments thereto, (ii) shall include all documents, instruments or agreements issued or executed in replacement thereof, and (iii) shall mean such document, instrument or agreement, or replacement or predecessor thereto, as amended, amended and restated, supplemented or otherwise modified (or reaffirmed by any reaffirmation or other agreement) from time to time and in effect at the time of determination (subject, in each case, to any restrictions on such amendments, restatements, supplements or modifications set forth herein) and (b) provisions of any statute, rule or regulation or other similar Governmental Act shall include any amended or successor provisions thereof. Upon termination of any Disbursement Agreement, any defined terms used herein or in any other Loan Document having meanings given to such terms in such Disbursement Agreement shall continue to have the meanings given to such terms in such Disbursement Agreement as in effect immediately prior to such termination. Upon termination of the Term Loan Agreement, any defined terms used herein or in any other Loan Document having

meanings given to such terms in the Term Loan Agreement shall continue to have the meanings given to such terms in the Term Loan Agreement as in effect on the Closing Date as such terms may have been permitted to be amended pursuant to and in compliance with the Loan Documents prior to such termination. Unless otherwise specifically indicated, the term "consolidated" with respect to any Person refers to such Person consolidated with its Subsidiaries, and excludes from such consolidation any Unrestricted Subsidiary as if such Unrestricted Subsidiary were not an Affiliate of such Person.

Section 1.03. Classification of Loans. For purposes of this Agreement, Loans may be classified and referred to by Type (e.g., a "LIBOR Loan").

Section 1.04. Accounting Terms. Except as otherwise expressly provided herein, all accounting terms not otherwise defined herein shall have the meanings assigned to them in conformity with GAAP. Financial statements and other information required to be delivered by the Borrower to the Administrative Agent pursuant to Section 5.01 shall be prepared in accordance with GAAP as in effect at the time of such preparation (and delivered together with the reconciliation statements provided for in Section 5.01(e), if applicable), except for the absence of footnotes and year-end adjustments for any financial statements other than those prepared for a Fiscal Year end. Subject to the foregoing, the last sentence of this Section 1.04 and Section 9.18, calculations in connection with the definitions, covenants and other provisions hereof shall utilize accounting principles and policies in conformity with those used to prepare the financial statements delivered by the Borrower pursuant to Section 3.05, Section 4.01(h) and Section 5.01. For purposes of determining compliance with any covenant (including the computation of any financial covenant) contained herein, Indebtedness of the Borrower and its Subsidiaries shall be deemed to be carried at 100% of the outstanding principal amount thereof, and the effects of FASB ASC 825 and FASB ASC 470-20 on financial liabilities shall be disregarded. Anything in this Agreement to the contrary notwithstanding, (a) any obligation of a Person under a lease (whether existing now or entered into in the future) that is not (or would not be) required to be classified and accounted for as a capital lease on the balance sheet of such Person under GAAP as in effect either on the Closing Date or at the time such lease is entered into shall not be treated as a capital lease solely as a result of (x) the adoption of any changes in, or (y) changes in the application of, GAAP after such lease is entered into, and (b) for the avoidance of doubt and notwithstanding any requirement under GAAP as in effect at any time, any obligation of a Person under the Ground Lease, the Entertainment Village Lease and the Golf Course Lease shall be treated as an operating lease hereunder.

Section 1.05. Letter of Credit Amounts. Unless otherwise specified herein, the amount of a Letter of Credit at any time shall be deemed to be the stated amount of such Letter of Credit in effect at such time; provided, however, that with respect to any Letter of Credit that, by its terms or the terms of any instrument, document or agreement related thereto, provides for one or more automatic increases in the stated amount thereof, the amount of such Letter of Credit shall be deemed to be the maximum stated amount of such Letter of Credit after giving effect to all such increases, whether or not such maximum stated amount is in effect at such time.

Section 1.06. Times of Day. Unless otherwise specified, all references herein to times of day shall be references to New York City time (daylight or standard, as applicable).

Section 1.07. Rounding. Any financial ratios required to be maintained by the Borrower pursuant to this Agreement shall be calculated by dividing the appropriate component by the other component, carrying the result to one place more than the number of places by which such ratio is expressed herein and rounding the result up or down to the nearest number (with a rounding-up if there is no nearest number).

Section 1.08. Electronic Execution of Assignments and Certain other Documents. The words "execute," "execution," "signed," "signature," and words of like import in or related to any document to be signed in connection with this Agreement and the transactions contemplated hereby (including Assignment and Acceptances, amendments or other modifications, waivers and consents) shall be deemed to include electronic signatures, the electronic matching of assignment terms and contract formations on electronic platforms approved by the Administrative Agent, or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state Laws based on the Uniform Electronic Transactions Act; provided that, notwithstanding anything contained herein to the contrary, the Administrative Agent is under no obligation to agree to accept electronic signatures in any form or in any format unless expressly agreed to by the Administrative Agent pursuant to procedures approved by it.

ARTICLE II.

THE FACILITY

Section 2.01. Intentionally Omitted.

Section 2.02. Loans.

(a) Commitments. Subject to the last sentence of this clause (a), from time to time during the Commitment Period and subject to the terms and conditions hereof, each Lender severally agrees to make Loans to the Borrower in an aggregate principal amount at any time outstanding up to but not exceeding an amount equal to such Lender's Commitment, minus such Lender's Pro Rata Share of the Letter of Credit Obligations at such time; provided, that after giving effect to the making of any Loans in no event shall the Total Utilization of Commitments exceed the Commitments then in effect. Amounts borrowed pursuant to this Section 2.02 may be repaid and reborrowed during the Commitment Period. Each Lender's Commitment shall expire on the Commitment Termination Date and all Loans and all other amounts owed hereunder with respect to the Loans and the Commitments shall, subject to Section 2.12 through Section 2.14, be paid in full no later than such date. Prior to the Casino Opening Date, the Borrower shall have no right to request (or be deemed to have requested), and the Lenders shall not make, Loans.

(b) Borrowing Mechanics for Loans.

(i) Except pursuant to Section 2.04(d), Loans that are ABR Loans shall be made in an aggregate minimum amount of $250,000 and integral multiples of $100,000 in excess

of that amount (or, if the then remaining available Commitments is less than such thresholds, such available amount), and Loans that are LIBOR Loans shall be made in an aggregate minimum amount of $250,000 and integral multiples of $100,000 in excess of that amount;

(ii) Whenever the Borrower desires that Lenders make Loans, the Borrower shall deliver to the Administrative Agent a fully executed Funding Notice no later than 11:00 a.m. (New York City time) at least three Business Days in advance of the proposed Credit Date in the case of a LIBOR Loan, and at least one Business Day in advance of the proposed Credit Date in the case of an ABR Loan. Except as otherwise provided herein, a Funding Notice for a Loan shall be irrevocable, and the Borrower shall be bound to make a Borrowing in accordance therewith;

(iii) Notice of receipt of each Funding Notice in respect of Loans, together with the amount of each Lender's Pro Rata Share thereof, shall be provided by the Administrative Agent to each applicable Lender with reasonable promptness on the same day as the Administrative Agent's receipt of such Funding Notice from the Borrower (so long as the Administrative Agent shall have received such notice by 11:00 a.m. (New York City time) on such day); and

(iv) Each Lender shall make the amount of its Loan available to the Administrative Agent not later than 1:00 p.m. (New York City time) on the applicable Credit Date by wire transfer of same day funds in Dollars, at the Administrative Agent's Principal Office. Except as provided herein, upon satisfaction or waiver of the conditions precedent specified herein, the Administrative Agent shall promptly make the proceeds of such Loans available to the Borrower on the applicable Credit Date by causing an amount of same day funds in Dollars equal to the proceeds of all such Loans received by the Administrative Agent from the Lenders to be credited to an account of the Borrower as may be designated in writing to the Administrative Agent by the Borrower.

Section 2.03. Intentionally Omitted.

Section 2.04. Issuance of Letters of Credit and Purchase of Participations Therein.

(a) Letters of Credit. Subject to the last sentence of this clause (a) and clause (v) below, from time to time during the Commitment Period, and subject to the terms and conditions hereof, the Issuing Bank agrees to issue Letters of Credit for the account of the Borrower or any other Loan Party and on behalf of the Borrower or any other Loan Party in an aggregate amount at any time outstanding up to but not exceeding the Letter of Credit Sublimit; provided, (i) each Letter of Credit shall be denominated in Dollars; (ii) the stated amount of each Letter of Credit shall not be less than $50,000 or such lesser amount as is acceptable to the Issuing Bank; (iii) after giving effect to such issuance, in no event shall the Total Utilization of Commitments exceed the Commitments then in effect; (iv) after giving effect to such issuance, in no event shall the Letter of Credit Obligations exceed the Letter of Credit Sublimit then in effect; (v) no Letters of Credit shall be issued on or after the date that is thirty days prior to the date set forth in clause (a) of the definition of "Commitment Termination Date;" (vi) in no event shall any Letter of Credit have an expiration date later than the earlier of (1) five Business Days prior to the date set forth in clause (a) of the definition

of "Commitment Termination Date" and (2) the date which is one year from the date of issuance of such Letter of Credit; and (vii) each Letter of Credit shall be subject to the Uniform Customs and/or ISP98, as set forth in the application for such Letter of Credit or as determined by the Issuing Bank, and, to the extent not inconsistent therewith, with the laws of the State of New York. Subject to the foregoing, upon the request of the Borrower, the Issuing Bank may agree that a Letter of Credit will automatically be extended for one or more successive periods, in any event not to exceed one year each or extend beyond the date set forth in clause (vi)(1) above, unless the Issuing Bank elects not to extend for any such additional period; provided, the Issuing Bank shall not extend any such Letter of Credit if it has received written notice that an Event of Default has occurred and is continuing at the time the Issuing Bank must elect to allow such extension. Only sight drawings shall be permitted under Letters of Credit. Prior to the Casino Opening Date the Borrower shall have no right to request, and the Issuing Bank shall not issue, Letters of Credit.

(b) Notice of Issuance and Amendment. Whenever the Borrower desires the issuance, amendment, extension or renewal of a Letter of Credit, it shall deliver to the Issuing Bank, with a copy to the Administrative Agent, an Issuance/Amendment Notice no later than 12:00 p.m. (New York City time) at least five Business Days, or in each case such shorter period as may be agreed to by the Issuing Bank in any particular instance, in advance of the proposed date of issuance. Upon satisfaction or waiver of the applicable conditions set forth in Section 4.02, the Issuing Bank shall issue or implement such requested Letter of Credit or such amendment, extension or renewal only in accordance with the Issuing Bank's standard operating procedures. Upon the issuance of any Letter of Credit or amendment, extension or renewal to a Letter of Credit, the Issuing Bank shall promptly notify the Administrative Agent and the Borrower thereof, in writing, which notice shall be accompanied by a copy of such Letter of Credit or such amendment, extension or renewal.

(c) Responsibility of the Issuing Bank With Respect to Requests for Drawings and Payments. In determining whether to honor any drawing under any Letter of Credit by the beneficiary thereof, the Issuing Bank shall be responsible only to examine the documents delivered under such Letter of Credit with reasonable care so as to determine whether they appear on their face to be in accordance with the terms and conditions of such Letter of Credit. The parties hereto expressly agree that, in the absence of gross negligence or willful misconduct on the part of the Issuing Bank (as determined by a court of competent jurisdiction by final and nonappealable judgment), the Issuing Bank shall be deemed to have exercised reasonable care in each such determination. In furtherance of the foregoing and without limiting the generality thereof, the parties agree that, with respect to documents presented which appear on their face to be in substantial compliance with the terms of a Letter of Credit, the Issuing Bank may, in its sole discretion, either accept and make payment upon such documents without responsibility for further investigation, regardless of any notice or information to the contrary, or refuse to accept and make payment upon such documents if such documents are not in strict compliance with the terms of such Letter of Credit. In addition, as between the Borrower and the Issuing Bank, the Borrower assumes all risks of the acts and omissions of, or misuse of the Letters of Credit issued by the Issuing Bank, by the respective beneficiaries of such Letters of Credit. In furtherance and not in limitation of the foregoing, none of the Administrative Agent, the Issuing Bank, any of their respective Related Parties nor any correspondent, participant or assignee of the Issuing Bank shall be responsible for: (i) the form, validity, sufficiency, accuracy, genuineness or legal effect of any document submitted

by any party in connection with the application for and issuance of any such Letter of Credit, even if it should in fact prove to be in any or all respects invalid, insufficient, inaccurate, fraudulent or forged; (ii) the validity or sufficiency of any instrument transferring or assigning or purporting to transfer or assign any such Letter of Credit or the rights or benefits thereunder or proceeds thereof, in whole or in part, which may prove to be invalid or ineffective for any reason; (iii) failure of the beneficiary of any such Letter of Credit to comply fully with any conditions required in order to draw upon such Letter of Credit; (iv) errors, omissions, interruptions or delays in transmission or delivery of any messages, by mail, cable, telegraph, telex or otherwise, whether or not they be in cipher; (v) errors in interpretation of technical terms; (vi) any loss or delay in the transmission or otherwise of any document required in order to make a drawing under any such Letter of Credit or of the proceeds thereof; (vii) the misapplication by the beneficiary of any such Letter of Credit of the proceeds of any drawing under such Letter of Credit; or (viii) any consequences arising from causes beyond the control of the Issuing Bank, including any Governmental Acts; none of the above shall affect or impair, or prevent the vesting of, any of the Issuing Bank's rights or powers hereunder. Without limiting the foregoing and in furtherance thereof, any action taken or omitted by the Issuing Bank under or in connection with the Letters of Credit or any documents or certificates delivered thereunder, if taken or omitted in good faith, shall not give rise to any liability on the part of the Issuing Bank to the Borrower or any other Loan Party.

(d) Reimbursement by the Borrower of Amounts Drawn or Paid Under Letters of Credit. In the event the Issuing Bank has determined to honor a drawing under a Letter of Credit, it shall immediately notify the Borrower and the Administrative Agent, and the Borrower shall reimburse the Issuing Bank within one Business Day of the date on which such drawing is honored (the "Reimbursement Date") an amount in Dollars and in same day funds equal to the amount of such honored drawing; provided, anything contained herein to the contrary notwithstanding, (i) unless the Borrower shall have notified the Administrative Agent and the Issuing Bank prior to 11:00 a.m. (New York City time) on the Reimbursement Date that the Borrower intends to reimburse the Issuing Bank for the amount of such honored drawing with funds other than the proceeds of Loans, the Borrower shall be deemed to have given a timely Funding Notice to the Administrative Agent requesting the Lenders to make Loans that are ABR Loans on the Reimbursement Date in an amount in Dollars equal to the amount of such honored drawing, and (ii) subject to satisfaction or waiver of the conditions specified in Section 4.02, the Lenders shall, on the Reimbursement Date, make Loans that are ABR Loans in the amount of such honored drawing, the proceeds of which shall be made available to, and applied directly by, the Administrative Agent to reimburse the Issuing Bank for the amount of such honored drawing; and provided, further, if for any reason proceeds of Loans are not received by the Issuing Bank on the Reimbursement Date in an amount equal to the amount of such honored drawing, the Borrower shall reimburse the Issuing Bank, on demand, in an amount in same day funds equal to the excess of the amount of such honored drawing over the aggregate amount of such Loans, if any, which are so received. Nothing in this Section 2.04(d) shall be deemed to relieve any Lender from its obligation to make Loans on the terms and conditions set forth herein, and the Borrower shall retain any and all rights it may have against any Lender resulting from the failure of such Lender to make such Loans under this Section 2.04(d).

(e) Lenders' Purchase of Participations in Letters of Credit. Immediately upon the issuance of each Letter of Credit, each Lender having a Commitment shall be deemed to have

purchased, and hereby agrees to irrevocably purchase, from the Issuing Bank a participation in such Letter of Credit and any drawings honored thereunder in an amount equal to such Lender's Pro Rata Share of the maximum amount which is or at any time may become available to be drawn thereunder. In the event that the Borrower shall fail for any reason to reimburse the Issuing Bank as provided in Section 2.04(d), the Issuing Bank shall promptly notify each Lender of the unreimbursed amount of such honored drawing and of such Lender's respective participation therein based on such Lender's Pro Rata Share. Each Lender shall make available to the Issuing Bank an amount equal to its respective participation, in Dollars and in same day funds, at the Principal Office of the Issuing Bank specified in such notice, not later than 12:00 p.m. (New York City time) on the first business day (under the laws of the jurisdiction in which such Principal Office of the Issuing Bank is located) after the date notified by the Issuing Bank. In the event that any Lender fails to make available to the Issuing Bank on such business day the amount of such Lender's participation in such Letter of Credit as provided in this Section 2.04(e), the Issuing Bank shall be entitled to recover such amount on demand from such Lender together with interest thereon for three Business Days at the rate customarily used by the Issuing Bank for the correction of errors among banks and thereafter at the Alternate Base Rate. Nothing in this Section 2.04(e) shall be deemed to prejudice the right of any Lender to recover from the Issuing Bank any amounts made available by such Lender to the Issuing Bank pursuant to this Section 2.04(e) in the event that it is determined that the payment with respect to a Letter of Credit in respect of which payment was made by such Lender constituted gross negligence or willful misconduct on the part of the Issuing Bank (as determined by a court of competent jurisdiction by final and nonappealable judgment). In the event the Issuing Bank shall have been reimbursed by other Lenders pursuant to this Section 2.04(e) for all or any portion of any drawing honored by the Issuing Bank under a Letter of Credit, the Issuing Bank shall distribute to each Lender which has paid all amounts payable by it under this Section 2.04(e) with respect to such honored drawing such Lender's Pro Rata Share of all payments subsequently received by the Issuing Bank from the Borrower in reimbursement of such honored drawing when such payments are received. Any such distribution shall be made to a Lender at its primary address set forth below its name on the Lender Addendum delivered by such Lender and/or in any Assignment and Acceptance to which such Lender assumed any Commitments or at such other address as such Lender may request.

(f) Obligations Absolute. The obligation of the Borrower to reimburse the Issuing Bank for drawings honored under the Letters of Credit issued by it and to repay any Loans made by Lenders pursuant to Section 2.04(d) and the obligations of Lenders under Section 2.04(e) shall be unconditional and irrevocable and shall be paid and performed strictly in accordance with the terms hereof under all circumstances including any of the following circumstances: (i) any lack of validity or enforceability of any Letter of Credit; (ii) the existence of any claim, set-off, defense or other right which the Borrower, any other Loan Party or any Lender may have at any time against a beneficiary or any transferee of any Letter of Credit (or any Persons for whom any such transferee may be acting), the Issuing Bank, any Lender or any other Person or, in the case of a Lender, against the Borrower or any other Loan Party, whether in connection herewith, the transactions contemplated herein or any unrelated transaction (including any underlying transaction between the Borrower or one of the other Companies and the beneficiary for which any Letter of Credit was procured); (iii) any draft or other document presented under any Letter of Credit proving to be forged, fraudulent, invalid or insufficient in any respect or any statement therein being untrue or inaccurate

in any respect; (iv) payment by the Issuing Bank under any Letter of Credit against presentation of a draft or other document which does not substantially comply with the terms of such Letter of Credit; (v) any adverse change in the business, operations, properties, assets, condition (financial or otherwise) or prospects of the Borrower or any other Company; (vi) any breach hereof or any other Loan Document by any party thereto; (vii) any other circumstance or happening whatsoever, whether or not similar to any of the foregoing; or (viii) the fact that an Event of Default or a Default shall have occurred and be continuing; provided, in each case, that payment by the Issuing Bank under the applicable Letter of Credit shall not have constituted gross negligence or willful misconduct of the Issuing Bank under the circumstances in question (such gross negligence or willful misconduct to have been as determined by a court of competent jurisdiction by final and nonappealable judgment).

(g) Indemnification. Without duplication of any obligation of the Borrower under Section 9.05, in addition to amounts payable as provided herein, the Borrower hereby agrees to protect, indemnify, defend, pay and save harmless the Issuing Bank from and against any and all claims, demands, liabilities, damages, losses, costs, charges and expenses (including reasonable fees, expenses and disbursements of counsel) which the Issuing Bank may incur or be subject to as a consequence, direct or indirect, of (i) the issuance of any Letter of Credit by the Issuing Bank, other than as a result of (1) the gross negligence or willful misconduct of the Issuing Bank (as determined by a court of competent jurisdiction by final and nonappealable judgment) or (2) the wrongful dishonor by the Issuing Bank of a proper demand for payment made under any Letter of Credit issued by it, or (ii) the failure of the Issuing Bank to honor a drawing under any Letter of Credit as a result of any Governmental Act. The indemnity and other obligations of the Borrower under this Section 2.04 shall not apply with respect to Taxes, other than any Taxes that represent losses, claims, damages, etc., arising from any non-Tax claim.

Section 2.05. Pro Rata Shares; Availability of Funds.

(a) Pro Rata Shares. All Loans shall be made, and all participations pursuant to Section 2.04(e) shall be purchased, by the Lenders simultaneously and proportionately to their respective Pro Rata Shares, it being understood that no Lender shall be responsible for any default by any other Lender in such other Lender's obligation to make a Loan requested hereunder or purchase a participation required hereby nor shall any Commitment of any Lender be increased or decreased as a result of a default by any other Lender in such other Lender's obligation to make a Loan requested hereunder or purchase a participation required hereby. Each Lender agrees that, in computing such Lender's portion of any Loans or other extensions of credit to be made hereunder, the Administrative Agent may, in its discretion, round each Lender's Pro Rata Share of such Loans or other extensions of credit to the next higher or lower whole Dollar amount.

(b) Availability of Funds. Unless the Administrative Agent shall have been notified by any Lender prior to the applicable Credit Date that such Lender does not intend to make available to the Administrative Agent the amount of such Lender's Loan requested on such Credit Date, the Administrative Agent may assume that such Lender has made such amount available to the Administrative Agent on such Credit Date and the Administrative Agent may, in its sole discretion, but shall not be obligated to, make available to the Borrower a corresponding amount on such Credit

Date. If such corresponding amount is not in fact made available to the Administrative Agent by such Lender, the Administrative Agent shall be entitled to recover such corresponding amount on demand from such Lender together with interest thereon, for each day from such Credit Date until the date such amount is paid to the Administrative Agent, at the customary rate set by the Administrative Agent for the correction of errors among banks for three (3) Business Days and thereafter at the Alternate Base Rate. If such Lender does not pay such corresponding amount forthwith upon the Administrative Agent's demand therefor, the Administrative Agent shall promptly notify the Borrower and the Borrower shall immediately pay such corresponding amount to the Administrative Agent together with interest thereon, for each day from such Credit Date until the date such amount is paid to the Administrative Agent, at the rate payable hereunder for ABR Loans. Nothing in this Section 2.05(b) shall be deemed to relieve any Lender from its obligation to fulfill its Commitments hereunder or to prejudice any rights that the Borrower may have against any Lender as a result of any default by such Lender hereunder. In the event any Loan proceeds received by the Administrative Agent in accordance with this Agreement are not delivered to the Borrower as a result of any condition precedent herein specified not having been met, the Administrative Agent shall return the amounts so received to the Lenders who delivered such Loan proceeds to the Administrative Agent.

Section 2.06. Evidence of Debt; Register; Lenders' Books and Records; Notes.

(a) Lenders' Evidence of Debt. Each Lender shall maintain on its internal records an account or accounts evidencing the Obligations of the Borrower to such Lender, including the amounts of the Loans made by it and each repayment and prepayment in respect thereof. Any such recordation shall be prima facie evidence of the matters so recorded; provided, that the failure to make any such recordation, or any error in such recordation, shall not affect any Lender's Commitments or the Borrower's Obligations in respect of any Loans.

(b) Register. The Administrative Agent shall, acting solely for purposes of this Section 2.06(b) on behalf of and as non-fiduciary agent for the Borrower, maintain at its Principal Office a register for the recordation of the names and addresses of Lenders and the Commitments and Loans, including in each case, principal and stated interest thereof, of each Lender from time to time (the "Register"). The Register shall be available for inspection by the Borrower or any Lender (but only to the extent of entries in the Register that are applicable to such Lender) at any reasonable time and from time to time upon reasonable prior notice. The Administrative Agent shall record in the Register the Commitments and the Loans and, with respect to each Loan, the Type of Loan thereof and, if applicable, the Interest Period applicable thereto, each repayment or prepayment in respect of the principal amount of the Loans and each assignment thereof pursuant to Section 9.04(c), and any such recordation shall be, absent manifest error, evidence of the matters so recorded and the Borrower, the Administrative Agent and each Lender shall treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement; provided, failure to make any such recordation, or any error in such recordation, shall not affect any Lender's Commitments or the Borrower's Obligations in respect of any Loan. The Borrower hereby designates the Administrative Agent to serve as the Borrower's representative and non-fiduciary agent solely for purposes of maintaining the Register as provided in this Section 2.06(b), and the Borrower hereby agrees that, to the extent the Administrative Agent serves in such capacity,

the Administrative Agent and its officers, directors, employees, agents and affiliates shall constitute "Indemnitees." It is the intention of the parties hereto that the Loans will be treated as in "registered form" within the meaning of Sections 163(f), 871(h)(2) and 881(c)(2) of the Tax Code (and any other relevant or successor provisions of the Tax Code).

(c) Notes. If so requested by any Lender by written notice to the Borrower at least two (2) Business Days prior to the Closing Date, or at any time thereafter, the Borrower shall execute and deliver to such Lender (and/or, if applicable and if so specified in such notice, to any Person who is an assignee of such Lender pursuant to Section 9.04) on the Closing Date (or, if such notice is delivered less than two (2) Business Days prior to or after the Closing Date, promptly after the Borrower's receipt of such notice) a Note or Notes to evidence such Lender's Loan, as the case may be.

Section 2.07. Interest on Loans.

(a) Except as otherwise set forth herein, each Type of Loans shall bear interest on the unpaid principal amount thereof from the date made to repayment (whether by acceleration or otherwise) thereof as follows: (1) if an ABR Loan, at the Alternate Base Rate plus the Applicable Margin, or (2) if a LIBOR Loan, at the Adjusted LIBO Rate plus the Applicable Margin.

(b) The basis for determining the rate of interest with respect to any Loan, and the Interest Period with respect to any LIBOR Loan, shall be selected by the Borrower and notified to the Administrative Agent pursuant to the applicable Funding Notice or Conversion/Continuation Notice, as the case may be. If on any day a Loan is outstanding with respect to which a Funding Notice or Conversion/Continuation Notice has not been delivered to the Administrative Agent in accordance with the terms hereof specifying the applicable basis for determining the rate of interest, then for that day such Loan shall be an ABR Loan.

(c) In connection with LIBOR Loans there shall be no more than eight (8) Interest Periods outstanding at any time. In the event the Borrower fails to specify between an ABR Loan or a LIBOR Loan in the applicable Funding Notice or Conversion/Continuation Notice (or, in the case of the conversion or continuation of a Loan, fails to deliver a Conversion/Continuation Notice with respect thereto), such Loan (if outstanding as a LIBOR Loan) will be automatically converted into an ABR Loan on the last day of the then current Interest Period for such Loan (or if outstanding as an ABR Loan will remain as, or (if not then outstanding) will be made as, an ABR Loan). In the event the Borrower fails to specify an Interest Period for any LIBOR Loan in the applicable Funding Notice or Conversion/Continuation Notice, the Borrower shall be deemed to have selected an Interest Period of one month. As soon as practicable on each Interest Rate Determination Date, the Administrative Agent shall determine (which determination shall, absent manifest error, be final, conclusive and binding upon all parties) the interest rate that shall apply to the LIBOR Loans for which an interest rate is then being determined for the applicable Interest Period and shall promptly give notice thereof to the Borrower and each applicable Lender.

(d) Interest payable pursuant to Section 2.07(a) shall be computed, in the case of ABR Loans, on the basis of a 365/366-day year for the actual number of days elapsed in the period during which such interest accrues, and in the case of LIBOR Loans, on the basis of a 360-day year, in

each case for the actual number of days elapsed in the period during which it accrues. In computing interest on any Loan, the date of the making of such Loan or the first day of an Interest Period applicable to such Loan or, with respect to an ABR Loan being converted from a LIBOR Loan, the date of conversion of such LIBOR Loan to such ABR Loan, as the case may be, shall be included, and the date of payment of such Loan or the expiration date of an Interest Period applicable to such Loan or, with respect to an ABR Loan being converted to a LIBOR Loan, the date of conversion of such ABR Loan to such LIBOR Loan, as the case may be, shall be excluded; provided, if a Loan is repaid on the same day on which it is made, one day's interest shall be paid on that Loan.

(e) Except as otherwise set forth herein, interest on each Loan shall be payable, in Cash, in arrears (i) on each Interest Payment Date applicable to that Loan; (ii) upon any prepayment of that Loan, whether voluntary or mandatory, to the extent accrued on the amount being prepaid; and (iii) at maturity, including final maturity; provided, however, with respect to any prepayment of an ABR Loan that is not accompanied by a termination of all Commitments, accrued interest shall instead be payable on the applicable Interest Payment Date.

(f) The Borrower agrees to pay to the Issuing Bank, with respect to drawings honored under any Letter of Credit, interest in Cash on the amount paid by the Issuing Bank in respect of each such honored drawing from the date such drawing is honored to (but excluding) the date such amount is reimbursed by or on behalf of the Borrower or the Lenders at a rate equal to 2.0% per annum in excess of the rate of interest otherwise payable hereunder with respect to Loans that are ABR Loans.

(g) Interest payable pursuant to Section 2.07(f) shall be computed on the basis of a 365/366-day year for the actual number of days elapsed in the period during which such interest accrues, and shall be payable on demand or, if no demand is made, on the date on which the related drawing under a Letter of Credit is reimbursed in full. Promptly upon receipt by the Issuing Bank of any payment of interest pursuant to Section 2.07(f), the Issuing Bank shall pay to the Administrative Agent for distribution to each Lender, out of the interest received by the Issuing Bank in respect of the period from the date such drawing is honored to (but excluding) the date on which the Issuing Bank is reimbursed for the amount of such drawing (including any such reimbursement out of the proceeds of any Loans), the amount that such Lender would have been entitled to receive in respect of the letter of credit Fee that would have been payable in respect of such Letter of Credit for such period if no drawing had been honored under such Letter of Credit. In the event the Issuing Bank shall have been reimbursed by Lenders for all or any portion of such honored drawing, the Issuing Bank shall pay to the Administrative Agent for distribution to each Lender which has paid all amounts payable by it under Section 2.04(e) with respect to such honored drawing such Lender's Pro Rata Share of any interest received by the Issuing Bank in respect of that portion of such honored drawing so reimbursed by Lenders for the period from the date on which the Issuing Bank was so reimbursed by Lenders to (but excluding) the date on which such portion of such honored drawing is reimbursed by the Borrower.

Section 2.08. Conversion/Continuation.

(a) Subject to Section 2.17 and so long as neither (x) a Default or an Event of Default under Section 7.01(b), Section 7.01(c), Section 7.01(h) or Section 7.01(i) shall have occurred and

then be continuing nor (y)(i) any other Event of Default shall have occurred and be continuing at such time and (ii) the Administrative Agent or the Required Lenders shall have determined in their sole discretion not to permit conversions to or continuations of LIBOR Loans pursuant to this Section 2.08(a), the Borrower shall have the option:

(i) to convert at any time all or any part of any Loan in a minimum amount equal to $250,000 and integral multiples of $100,000 in excess of that amount from one Type of Loan to another Type of Loan; provided that, a LIBOR Loan may only be converted on the expiration of the Interest Period applicable to such LIBOR Loan unless the Borrower shall pay all amounts due under Section 2.17 in connection with any such conversion; or

(ii) upon the expiration of any Interest Period applicable to any LIBOR Loan, to continue all or any portion of such Loan in a minimum amount equal to $250,000 and integral multiples of $100,000 in excess of that amount as a LIBOR Loan.

(b) In order to exercise any conversion option pursuant to Section 2.08(a)(i) or continuation option pursuant to Section 2.08(a)(ii), the Borrower shall deliver a Conversion/Continuation Notice to the Administrative Agent no later than 11:00 a.m. (New York City time) at least three Business Days in advance of the proposed conversion date (in the case of a conversion to an ABR Loan) and at least three Business Days in advance of the proposed conversion/continuation date (in the case of a conversion to, or a continuation of, a LIBOR Loan). Except as otherwise provided herein, a Conversion/Continuation Notice for conversion to, or continuation of, any LIBOR Loans shall be irrevocable, and the Borrower shall be bound to effect a conversion or continuation in accordance therewith. If the Borrower shall fail to give any required notice as described in this Section 2.08(b) or if such continuation is not permitted pursuant to Section 2.08(a), such Loans shall be automatically converted to ABR Loans on the last day of such then expiring Interest Period.

Section 2.09. Default Interest. Upon the occurrence and during the continuance of any Event of Default described in Section 7.01(b), (c) (with respect to interest only), (h) or (i), or, to the extent required by the Required Lenders, any Event of Default described in Section 7.01(d) (with respect to defaults under Section 6.08 only), the overdue principal amount of all Loans outstanding and any overdue interest payments on the Loans and Fees or other amounts owed and overdue under the Loan Documents shall in each case thereafter bear interest (including post-petition interest in any proceeding under any applicable Debtor Relief Law) payable on demand in Cash at a rate that is equal to the lesser of (a) 2.0% per annum in excess of the interest rate otherwise payable hereunder with respect to the applicable Loans (or, in the case of any such Fees and other amounts, at a rate which is 2.0% per annum in excess of the interest rate otherwise payable hereunder for ABR Loans) and (b) the maximum rate of interest permitted under applicable law; provided, in the case of LIBOR Loans, upon the expiration of the Interest Period in effect at the time any such increase in interest rate is effective such LIBOR Loans shall thereupon become ABR Loans and shall thereafter bear interest payable upon demand at a rate which is equal to the lesser of (i) 2.0% per annum in excess of the interest rate otherwise payable hereunder for ABR Loans and (ii) the maximum rate of interest permitted under applicable law (such rate, the "Default Rate"). Payment or acceptance of the increased rates of interest provided for in this Section 2.09 is not a permitted

alternative to timely payment and shall not constitute a waiver of any Event of Default or otherwise prejudice or limit any rights or remedies of the Administrative Agent or any Lender.

Section 2.10. Fees.

(a) Intentionally Omitted.

(b) The Borrower agrees to pay to each Lender:

(i) commitment fees for each day during the period from and including the Closing Date to the last day of the Commitment Period equal to (1) the daily difference between (a) such Lender's Commitment, and (b) such Lender's Pro Rata Share of the Total Utilization of Commitments, multiplied by (2) 0.50% per annum; and

(ii) letter of credit fees for each day during the period from and including the Casino Opening Date to the last day of the Commitment Period equal to (1) the Applicable Margin for LIBOR Loans multiplied by (2) such Lender's Pro Rata Share of the aggregate face amount of all outstanding Letters of Credit (regardless of whether any conditions for drawing could then be met and determined as of the close of business on any date of determination).

(c) The Borrower agrees to pay to the Issuing Bank, the following Fees:

(i) a fronting fee for each day during the period from and including the Casino Opening Date to the last day of the Commitment Period equal to 0.25% per annum, times the aggregate face amount of all outstanding Letters of Credit (regardless of whether any conditions for drawing could then be met and determined as of the close of business on any date of determination); and

(ii) such documentary and processing charges for any issuance, amendment, extension, renewal, transfer or payment of a Letter of Credit as are in accordance with the Issuing Bank's standard schedule for such charges and as in effect at the time of such issuance, amendment, extension, renewal, transfer or payment, as the case may be.

(d) All Fees referred to in Section 2.10(b) shall be paid to the Administrative Agent in Cash at its Principal Office and upon receipt, the Administrative Agent shall promptly distribute the same to each Lender. All Fees referred to in Section 2.10(c) shall be paid to the Issuing Bank in Cash at its Principal Office for its own account.

(e) In addition to any of the foregoing Fees, the Borrower agrees to pay to the Agents and the Lead Arranger such other Fees in the amounts and at the times separately agreed upon (including in Section 10 of the Fee Letter). Once paid, none of the Fees referred to in this Section 2.10 shall be refundable under any circumstances absent manifest error in the calculation of such Fees.

(f) All fees referred to in Sections 2.10(b) and 2.10(c)(i) shall be calculated on the basis of a 360-day year and the actual number of days elapsed (including the first day but excluding the

last day) and shall be payable quarterly in arrears on the last Business Day of each March, June, September and December of each year commencing on the first such date of the first full Fiscal Quarter to occur after the Closing Date and until the last day of the Commitment Period. Such fees shall also be payable on the Commitment Termination Date. Additionally, on the date of each termination or reduction of Commitments (whether voluntary or mandatory), the Borrower shall pay the applicable fees set forth in Section 2.10(b)(i) with respect to the amount of such Commitments so terminated or reduced accrued to, but excluding, the date of such termination or reduction.

Section 2.11. Intentionally Omitted.

Section 2.12. Voluntary Prepayments / Commitment Reductions.

(a) Voluntary Prepayments.

(i) Any time and from time to time:

(1) with respect to ABR Loans, the Borrower may prepay any such ABR Loans on any Business Day in whole or in part; provided that each partial prepayment of Loans shall be in an aggregate minimum amount of $250,000 and integral multiples of $100,000 in excess of that amount, and

(2) with respect to LIBOR Loans, the Borrower may prepay any such LIBOR Loans on any Business Day in whole or in part; provided that each partial prepayment of Loans shall be in an aggregate minimum amount of $250,000 and integral multiples of $100,000 in excess of that amount.

(ii) All such prepayments shall be made:

(1) upon not less than one (1) Business Day's prior written or telephonic notice in the case of ABR Loans, and

(2) upon not less than three (3) Business Days' prior written or telephonic notice in the case of LIBOR Loans, in each case given to the Administrative Agent by 12:00 p.m. (New York City time) on the date required and, if given by telephone, promptly confirmed in writing to the Administrative Agent (and the Administrative Agent will promptly notify each applicable Lender) and specifying the principal amount of the Loans to be prepaid and the applicable prepayment date. Upon the giving of any such notice, the principal amount of the Loans specified in such notice (together with any amounts required to be paid in connection therewith under Section 2.07(e) or Section 2.17(c)) shall become due and payable on the prepayment date specified therein. Any such voluntary prepayment shall be applied as specified in Section 2.14(a) and Section 2.14(c).

(b) Voluntary Commitment Reductions.

(i) The Borrower may, upon not less than three Business Days' prior written or telephonic notice confirmed in writing to the Administrative Agent, at any time and from

time to time terminate in whole or permanently reduce in part, without premium or penalty, the Commitments in an amount up to the amount by which the Commitments exceed the Total Utilization of Commitments at the time of such proposed termination or reduction; provided, any such partial reduction of the Commitments shall be in an aggregate minimum amount of $250,000 and integral multiples of $100,000 in excess of that amount.

(ii) The Borrower's notice to the Administrative Agent with respect to any such Commitment reduction shall designate the date (which shall be a Business Day) of such termination or reduction and the amount of any partial reduction, and such termination or reduction of the Commitments shall be effective on the date specified in the Borrower's notice and shall reduce the Commitment of each Lender proportionately to its Pro Rata Share thereof.

Section 2.13. Mandatory Prepayments.

(a) Subject to Section 2.13(e) of the Term Loan Agreement, from and after the Discharge of Term Loan Obligations, not later than the fifth Business Day following (i) the receipt of Net Cash Proceeds by any Loan Party from any Asset Sale or (ii) the receipt of Net Cash Proceeds by any Loan Party as a result of the occurrence of any Recovery Event, the Borrower shall (or shall cause such other applicable Loan Party to) apply the Required Prepayment Percentage of the Net Cash Proceeds received with respect thereto in accordance with Section 2.14(b).

(b) Subject to Section 2.13(e) of the Term Loan Agreement, from and after the Discharge of Term Loan Obligations, in the event that any Loan Party shall receive Net Cash Proceeds from the issuance or other incurrence of Indebtedness for borrowed money of such Loan Party (other than Indebtedness permitted pursuant to Section 6.01 (excluding Indebtedness provided by Persons other than the Sponsors pursuant to Section 6.01(l))), the Borrower shall (or shall cause such other applicable Loan Party to), substantially simultaneously with (and in any event not later than the Business Day next following) the receipt of such Net Cash Proceeds by such Loan Party, apply an amount equal to the Required Prepayment Percentage of such Net Cash Proceeds in accordance with Section 2.14(b).

(c) Subject to Section 2.13(e) of the Term Loan Agreement, from and after the Discharge of Term Loan Obligations, commencing with the Fiscal Year in which the Full Opening Date occurs and for each Fiscal Year thereafter, no later than the earlier of (i) 125 days after the end of such Fiscal Year, and (ii) five (5) days after the date on which the financial statements with respect to such Fiscal Year are delivered pursuant to Section 5.01(c), the Borrower shall apply in accordance with Section 2.14(b), an amount equal to (A) the Required Prepayment Percentage of Consolidated Excess Cash Flow for (x) in the case of the first prepayment under this clause (c), to the extent made in respect of the Fiscal Year in which the Full Opening Date occurs, the period commencing on the first day of the first full Fiscal Quarter occurring after the Full Opening Date through the last day of such Fiscal Year, or (y) in the case of each other prepayment under this clause (c), the Fiscal Year then ended, minus (B) the aggregate principal amount of voluntary repayments of Loans made with internally generated cash flow during the Fiscal Year, minus (C) the Regulatory Cash Amount.

(d) The Borrower shall deliver to the Administrative Agent, (i) at the time of each prepayment required under this Section 2.13, a certificate signed by a Financial Officer of the Borrower setting forth in reasonable detail the calculation of the amount of such prepayment and (ii) at least three (3) Business Days prior written notice of any such pre-payment. In the event that the Borrower shall determine that the actual amount prepaid was less than the amount required to be prepaid, the Borrower shall promptly apply such excess amount in accordance with Section 2.14(b), and the Borrower shall concurrently therewith deliver to the Administrative Agent a certificate of a Financial Officer demonstrating the derivation of such excess.

Section 2.14. Application of Prepayments/Reductions.

(a) Application of Voluntary Prepayments by Type of Loans. Subject to Section 2.15(g), any prepayment of any Loan pursuant to Section 2.12(a) shall be applied as specified by the Borrower in the applicable notice of prepayment; provided, that, in the event that the Borrower fails to specify the Loans to which any such prepayment shall be applied, such prepayment shall be applied to repay outstanding Loans to the full extent thereof (without any corresponding permanent reduction in the Commitments).

(b) Application of Mandatory Prepayments by Type of Loans. Any amount required to be paid pursuant to Section 2.13(a) through Section 2.13(c) shall be applied as follows:

first, to prepay outstanding reimbursement obligations with respect to Letters of Credit;

second, to prepay the Loans to the full extent thereof (without any corresponding permanent reduction in the Commitments); and

third, to Cash Collateralize Letters of Credit.

(c) Application of Prepayments of Loans to ABR Loans and LIBOR Loans. Any prepayment of the Loans pursuant to Section 2.12 or Section 2.13 shall be applied first to ABR Loans to the full extent thereof before application to LIBOR Loans, in each case in a manner which minimizes the amount of any payments required to be made by the Borrower pursuant to Section 2.17(c).

Section 2.15. General Provisions Regarding Payments.

(a) All payments by or on behalf of the Borrower of principal, interest, Fees and other Obligations shall be made in Dollars in same day funds, without defense, setoff or counterclaim, free of any restriction or condition, and delivered to the Administrative Agent not later than 1:00 p.m. (New York City time) on the date due at the Administrative Agent's Principal Office for the account of the Lenders.

(b) All payments in respect of the principal amount of any Loan (other than prepayments of ABR Loans that are not accompanied by a termination of the Commitments but otherwise including all payments, distributions or other transfers in respect of the principal amount of any

Loan (whether or not upon maturity, whether mandatory or optional, whether voluntary or involuntary, including following any default or any acceleration (whether automatic or following notice), following any Asset Sale, or following the filing by or against any Loan Party of any petition under any Debtor Relief Law (whether or not such payment, distribution, or transfer is under a plan of reorganization or liquidation or ordered by any court of competent jurisdiction) or otherwise)) shall be accompanied by payment, in Cash, of accrued interest on the principal amount being repaid or prepaid.

(c) The Administrative Agent shall promptly distribute to each Lender at such address as such Lender shall indicate in writing, such Lender's Pro Rata Share of all payments and prepayments of principal and interest due hereunder, together with all other amounts due thereto, including all Fees payable with respect thereto (or, to the extent any such amounts are paid with respect to any such Lender's interests individually, the Administrative Agent shall promptly distribute to such Lender such amounts), to the extent received by the Administrative Agent.

(d) Notwithstanding the foregoing provisions hereof, if any Conversion/Continuation Notice is withdrawn as to any Affected Lender or if any Affected Lender makes ABR Loans in lieu of its Pro Rata Share of any LIBOR Loans, the Administrative Agent shall give effect thereto in apportioning payments received thereafter.

(e) Except as otherwise provided herein and subject to the provisos set forth in the definition of "Interest Period", whenever any payment to be made hereunder shall be stated to be due on a day that is not a Business Day, such payment shall be made on the next succeeding Business Day and such extension of time shall be included in the computation of the payment of interest and of Fees hereunder.

(f) Any payment by or on behalf of the Borrower hereunder that is not made in same day funds prior to 1:00 p.m. (New York City time) on the date due shall be a non-conforming payment in the Administrative Agent's sole discretion. Any such payment shall not be deemed to have been received by the Administrative Agent until the later of (i) the time such funds become available funds, and (ii) the applicable next Business Day. The Administrative Agent shall give prompt written notice to the Borrower and each applicable Lender if any payment is non-conforming. Any non-conforming payment may constitute or become a Default or an Event of Default in accordance with the terms of Section 7.01. Interest shall continue to accrue on any principal as to which a non-conforming payment is made until such funds become available funds (but in no event less than the period from the date of such payment to the next succeeding applicable Business Day) at the rate determined pursuant to Section 2.09.

(g) If an Event of Default shall have occurred and is continuing and not otherwise been waived or cured, and the maturity of the Obligations shall have been accelerated pursuant to Section 7.01, all payments or proceeds received by the Agents hereunder in respect of any of the Obligations shall be applied in accordance with the application arrangements described in Section 7.02**.**

Section 2.16. Ratable Sharing. Except to the extent that this Agreement or any other Loan Document provides for payments to be allocated to a particular Lender or Lenders (including as provided in the Security Documents with respect to amounts realized from the exercise of rights

with respect to Liens on the Collateral), the Lenders hereby agree among themselves that if any of them shall, whether by voluntary payment (other than a voluntary prepayment of Loans made and applied in accordance with the terms hereof), through the exercise of any right of set-off or banker's lien, by counterclaim or cross action or by the enforcement of any right under the Loan Documents or otherwise, or as adequate protection of a deposit treated as cash collateral under any Debtor Relief Law, receive payment or reduction of a proportion of the aggregate amount of principal, interest, amounts payable in respect of Letters of Credit, Fees and other amounts then due and owing to such Lender hereunder or under the other Loan Documents (collectively, the "Aggregate Amounts Due" to such Lender) which is greater than the proportion received by any other Lender in respect of the Aggregate Amounts Due to such other Lender, then the Lender receiving such proportionately greater payment shall (a) notify the Administrative Agent and each such other Lender of the receipt of such payment and (b) apply a portion of such payment to purchase participations (which it shall be deemed to have purchased from each seller of a participation simultaneously upon the receipt by such seller of its portion of such payment) in the Aggregate Amounts Due to such other Lenders so that all such recoveries of Aggregate Amounts Due shall be shared by all applicable Lenders in proportion to the Aggregate Amounts Due to them; provided, (i) if all or part of such proportionately greater payment received by such purchasing Lender is thereafter recovered from such Lender upon the bankruptcy or reorganization of a Company or otherwise, those purchases shall be rescinded and the purchase prices paid for such participations shall be returned to such purchasing Lender ratably to the extent of such recovery, but without interest, and (ii) the provisions of this paragraph shall not be construed to apply to (x) any payment made by the Borrower pursuant to and in accordance with the express terms of this Agreement (including the application of funds arising from the existence of a Defaulting Lender), or (y) any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Loans or participations in disbursements with respect to Letters of Credit to any assignee or participant, other than to the Borrower or any Subsidiary thereof (as to which the provisions of this paragraph shall apply). The Borrower expressly consents to the foregoing arrangement and agrees that any holder of a participation so purchased may exercise any and all rights of banker's lien, set-off or counterclaim with respect to any and all monies owing by any Company to that holder with respect thereto as fully as if that holder were owed the amount of the participation held by that holder.

Section 2.17. Making or Maintaining LIBOR Loans.

(a) Inability to Determine Applicable Interest Rate. In the event that (x) the Administrative Agent shall have determined (which determination shall be final and conclusive and binding upon all parties hereto absent manifest error), on any Interest Rate Determination Date with respect to any LIBOR Loans or any ABR Loans as to which the interest rate is determined with reference to the Adjusted LIBO Rate, that by reason of circumstances affecting the London interbank market adequate and fair means do not exist for ascertaining the interest rate applicable to such Loans on the basis provided for in the definition of Adjusted LIBO Rate, or (y) prior to the commencement of any Interest Period with respect to LIBOR Loans or ABR Loans as to which the interest rate is determined with reference to the Adjusted LIBO Rate, the Administrative Agent is advised by the Required Lenders that the Adjusted LIBO Rate for such Interest Period will not adequately and fairly reflect the cost to such Lenders of making or maintaining such LIBOR Loans or such ABR Loans for such Interest Period, the Administrative Agent shall on such date give notice

(by facsimile or by telephone confirmed in writing) to the Borrower and each Lender of such determination, whereupon (i) no Loans may be made as, or converted to, LIBOR Loans and the Alternate Base Rate shall be determined without regard to clause (c) of the definition thereof until such time as the Administrative Agent notifies the Borrower and Lenders that the circumstances giving rise to such notice no longer exist, and (ii) any Funding Notice or Conversion/Continuation Notice given by the Borrower with respect to the continuation of or conversion to LIBOR Loans in respect of which such determination was made shall be deemed to be rescinded by the Borrower.

(b) Illegality or Impracticability of LIBOR Loans. In the event that on any date any Lender shall have determined (which determination shall be final and conclusive and binding upon all parties hereto (absent manifest error) but shall be made only after consultation with the Borrower and the Administrative Agent) that the making, maintaining or continuation of its LIBOR Loans (i) has become unlawful as a result of compliance by such Lender in good faith with any law, treaty, governmental rule, regulation, guideline or order (or would conflict with any such treaty, governmental rule, regulation, guideline or order not having the force of law even though the failure to comply therewith would not be unlawful), or (ii) has become impracticable, as a result of contingencies occurring after the date hereof which materially and adversely affect the London interbank market or the position of such Lender in that market, then, and in any such event, such Lender shall be an "Affected Lender" and it shall on that day give notice (by facsimile or by telephone confirmed in writing) to the Borrower and the Administrative Agent of such determination (which notice the Administrative Agent shall promptly transmit to each other Lender). Thereafter (1) the obligation of the Affected Lender to make Loans as, or to convert Loans to, LIBOR Loans shall be suspended and ABR Loans shall be determined without reference to clause (c) of the definition thereof, until such notice shall be withdrawn by the Affected Lender, (2) to the extent such determination by the Affected Lender relates to a LIBOR Loan then being requested by the Borrower pursuant to a Funding Notice or a Conversion/Continuation Notice, the Affected Lender shall make such Loan as (or continue such Loan as or convert such Loan to, as the case may be) an ABR Loan as to which the interest rate is not determined with reference to the Adjusted LIBO Rate, (3) the Affected Lender's obligation to maintain its outstanding LIBOR Loans (the "Affected Loans") shall be terminated at the earlier to occur of the expiration of the Interest Period then in effect with respect to the Affected Loans or when required by law, and (4) the Affected Loans shall automatically convert into ABR Loans as to which the interest rate is not determined with reference to the Adjusted LIBO Rate on the date of such termination. Notwithstanding the foregoing, to the extent a determination by an Affected Lender as described above relates to a LIBOR Loan then being requested by the Borrower pursuant to a Funding Notice or a Conversion/Continuation Notice, the Borrower shall have the option, subject to the provisions of Section 2.17(c), to rescind such Funding Notice or Conversion/Continuation Notice as to all Lenders by giving notice (by facsimile or by telephone confirmed in writing) to the Administrative Agent of such rescission on the date on which the Affected Lender gives notice of its determination as described above (which notice of rescission the Administrative Agent shall promptly transmit to each other Lender). Except as provided in the immediately preceding sentence, nothing in this Section 2.17(b) shall affect the obligation of any Lender other than an Affected Lender to make or maintain Loans as, or to convert Loans to, LIBOR Loans or ABR Loans as to which the interest rate is determined with reference to the Adjusted LIBO Rate in accordance with the terms hereof.

(c) Indemnity for Breakage or Non-Commencement of Interest Periods. The Borrower shall indemnify each Lender against any loss or expense that such Lender may sustain or incur as a consequence of (i) any event, other than a default by such Lender in the performance of its obligations hereunder, which results in (A) such Lender receiving or being deemed to receive any amount on account of the principal of any LIBOR Loan prior to the end of the Interest Period in effect therefor, (B) the conversion of any LIBOR Loan to an ABR Loan, or the conversion of the Interest Period with respect to any LIBOR Loan, in each case other than on the last day of the Interest Period in effect therefor or (C) a borrowing of any LIBOR Loan not occurring on a date specified therefor in a Funding Notice or a conversion to or continuation of any LIBOR Loan not occurring on a date specified therefor in a Conversion/Continuation Notice (any of the events referred to in this clause (i) being called a "Breakage Event") or (ii) any default in the making of any payment or prepayment required to be made hereunder. In the case of any Breakage Event, such loss shall include an amount equal to the excess, as reasonably determined by such Lender, of (A) its cost of obtaining funds for the LIBOR Loan that is the subject of such Breakage Event for the period from the date of such Breakage Event to the last day of the Interest Period in effect (or that would have been in effect) for such Loan over (B) the amount of interest likely to be realized by such Lender in redeploying the funds released or not utilized by reason of such Breakage Event for such period. A certificate of any Lender setting forth in reasonable detail any amount or amounts which such Lender is entitled to receive pursuant to this Section 2.17(c) shall be delivered to the Borrower and shall be conclusive absent manifest error.

Section 2.18. Reserve Requirements; Change in Circumstances.

(a) If any Change in Law shall:

(i) impose, modify or deem applicable any reserve, special deposit, compulsory loan, insurance charge, liquidity or similar requirement against assets of, deposits with or for the account of, or credit extended or participated in by, any Lender (except any reserve requirement reflected in the Adjusted LIBO Rate) or any Issuing Bank;

(ii) subject any Recipient to any Taxes (other than Indemnified Taxes and Excluded Taxes) on its Loans, principal, Letters of Credit, Commitments or other Obligations, or its deposits, reserves, other liabilities or capital attributable thereto; or

(iii) impose on any Lender or any Issuing Bank or the London interbank market any other condition, cost or expense (other than Taxes) affecting this Agreement or Loans made by such Lender or any Letter of Credit or participation therein;

and the result of any of the foregoing shall be to increase the cost to such Lender, such Issuing Bank or such other Recipient, of making, converting to, continuing or maintaining any LIBOR Loan, or to increase the cost to such Lender, such Issuing Bank or such other Recipient of participating in, issuing or maintaining any Letter of Credit (or of maintaining its obligation to participate in or to issue any Letter of Credit), or to reduce the amount of any sum received or receivable by such Lender, such Issuing Bank or such other Recipient hereunder (whether of principal, interest or any other amount) then, upon the request of such Lender, such Issuing Bank or such other Recipient, the Borrower will pay to such Lender, such Issuing Bank or such other

Recipient, as the case may be, such additional amount or amounts as will compensate such Lender, such Issuing Bank or such other Recipient, as the case may be, for such additional costs incurred or reduction suffered. If any Lender, Issuing Bank or other Recipient becomes entitled to claim any additional amounts pursuant to this Section 2.18, it shall notify the Borrower (with a copy to the Administrative Agent) of the event by reason of which it has become so entitled.

(b) If any Lender or Issuing Bank determines in good faith that any Change in Law affecting such Lender or Issuing Bank or any lending office of such Lender or Issuing Bank or such Lender's or Issuing Bank's holding company, if any, regarding capital or liquidity requirements, has or would have the effect of reducing the rate of return on such Lender's or Issuing Bank's capital or on the capital of such Lender's or Issuing Bank's holding company, if any, as a consequence of this Agreement, the Commitments of such Lender or the Loans made by, or participations in Letters of Credit held by, such Lender, or the Letters of Credit issued by any Issuing Bank, to a level below that which such Lender or Issuing Bank or such Lender's or Issuing Bank's holding company could have achieved but for such Change in Law (taking into consideration such Lender's or Issuing Bank's policies and the policies of such Lender's or Issuing Bank's holding company with respect to capital adequacy), then from time to time after submission by such Lender or Issuing Bank to the Borrower (with a copy to the Administrative Agent) of a written request therefor the Borrower will pay to such Lender or Issuing Bank, as the case may be, such additional amount or amounts as will compensate such Lender or Issuing Bank or such Lender's or Issuing Bank's holding company for any such reduction suffered.

(c) A certificate of a Lender or Issuing Bank setting forth in reasonable detail the amount or amounts necessary to compensate such Lender or Issuing Bank or its holding company, as the case may be, as specified in Section 2.18(a) or Section 2.18(b) and delivered to the Borrower (with a copy to the Administrative Agent), shall be conclusive absent manifest error. The Borrower shall pay such Lender or Issuing Bank, as the case may be, the amount shown as due on any such certificate within ten (10) Business Days after receipt thereof.

(d) Failure or delay on the part of any Lender or Issuing Bank to demand compensation pursuant to this Section 2.18 shall not constitute a waiver of such Lender's or Issuing Bank's right to demand such compensation; provided that the Borrower shall not be required to compensate a Lender or Issuing Bank pursuant to this Section 2.18 for any increased costs incurred or reductions suffered more than one hundred eighty (180) days prior to the date that such Lender or Issuing Bank, as the case may be, notifies the Borrower of the Change in Law giving rise to such increased costs or reductions, and of such Lender's or Issuing Bank's intention to claim compensation therefor (except that, if the Change in Law giving rise to such increased costs or reductions is retroactive, then the one hundred eighty (180) day period referred to above shall be extended to include the period of retroactive effect thereof).

(e) The obligations of the Borrower pursuant to this Section 2.18 shall survive the termination of this Agreement and the payment of the Loans and all other amounts payable hereunder.

Section 2.19. Taxes.

(a) Any and all payments by or on account of any obligation of the Borrower or any other Company under this Agreement or under any other Loan Document shall be made free and clear of and without deduction for any Indemnified Taxes or Other Taxes, except as required by applicable law; provided that if any applicable law requires the deduction or withholding of any Tax from any such payment, then (i) the Borrower, such other Company or the Administrative Agent, as applicable, shall be entitled to make such deduction or withholding as it reasonably determines and shall timely pay the full amount deducted to the relevant Governmental Authority in accordance with applicable law, and (ii) if such Tax is an Indemnified Tax or Other Tax, then the sum payable by the Borrower or such other Company shall be increased as necessary so that after making all required deductions or withholding (including deductions or withholdings applicable to additional sums payable under this Section 2.19) the Administrative Agent or the applicable Lender (as the case may be) receives an amount equal to the sum it would have received had no such deductions or withholdings been made. In addition, without limiting the foregoing provisions, the Borrower or any other Company hereunder or under any other Loan Document shall timely pay (or cause to be timely paid) any Other Taxes to the relevant Governmental Authority in accordance with applicable law, or, at the option of the Administrative Agent, timely reimburse it for the payment of any Other Taxes.

(b) The Borrower shall indemnify the Administrative Agent and each Lender, within fifteen (15) days after written demand therefor, for the full amount of any Indemnified Taxes or Other Taxes paid or payable by the Administrative Agent or such Lender, as the case may be, or any of their respective Affiliates, on or with respect to any payment by or on account of any obligation of the Borrower or any Company hereunder or under any other Loan Document (including Indemnified Taxes or Other Taxes imposed or asserted on or attributable to amounts payable under this Section 2.19) and any reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes or Other Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate setting forth in reasonable detail the amount of such payment or liability delivered to the Borrower by a Lender, or by the Administrative Agent on its own behalf or on behalf of a Lender, shall be conclusive absent manifest error. Notwithstanding the foregoing, the Borrower shall not be obliged to indemnify a Lender or the Administrative Agent pursuant to this Section 2.19(b) with respect to any interest, penalties or expenses accrued during any period prior to the date that is two hundred seventy (270) days prior to the date of written demand for such indemnification if such Lender or the Administrative Agent had actual knowledge of the circumstances giving rise to such interest, penalties or expenses and of the fact that such circumstances would result in a claim for such indemnification; provided, that the foregoing limitation shall not apply to any interest, penalties or expenses arising out of the retroactive application of any Change in Law within such 270-day period.

(c) As soon as practicable after any payment of Taxes by the Borrower, any other Company or the Administrative Agent to a Governmental Authority pursuant to this Section 2.19, the Borrower shall deliver (or cause to be delivered) to the Administrative Agent if such payment was made by the Borrower or any other Company or, at the request of the Borrower and if such payment was made by the Administrative Agent, the Administrative Agent shall deliver to the Borrower, the original or a certified copy of a receipt issued by such Governmental Authority

evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to the Administrative Agent or the Borrower, as the case may be.

(d) Each Lender shall severally indemnify the Administrative Agent, within 15 days after demand therefor, for (i) any Indemnified Taxes or Other Taxes attributable to such Lender (but only to the extent that the Borrower or any Company has not already indemnified the Administrative Agent for such Indemnified Taxes or Other Taxes and without limiting the obligation of the Borrower to do so), (ii) any Taxes attributable to such Lender's failure to comply with the provisions of Section 9.04 relating to the maintenance of a Participant Register and (iii) any Excluded Taxes attributable to such Lender, in each case, that are payable or paid by the Administrative Agent in connection with any Loan Document, and any reasonable expenses arising therefrom or with respect thereto, whether or not such Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to any Lender by the Administrative Agent shall be conclusive absent manifest error. Each Lender hereby authorizes the Administrative Agent to set off and apply any and all amounts at any time owing to such Lender under any Loan Document or otherwise payable by the Administrative Agent to the Lender from any other source against any amount due to the Administrative Agent under this clause (d).

(e) (i) Any Lender that is entitled to an exemption from or reduction of withholding Tax with respect to payments made under any Loan Document shall deliver to the Borrower and the Administrative Agent, at the time or times reasonably requested by the Borrower or the Administrative Agent, such properly completed and executed documentation reasonably requested by the Borrower or the Administrative Agent as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, any Lender, if reasonably requested by the Borrower or the Administrative Agent, shall deliver such other documentation prescribed by applicable law or reasonably requested by the Borrower or the Administrative Agent as will enable the Borrower or the Administrative Agent to determine whether or not such Lender is subject to backup withholding or information reporting requirements. Notwithstanding anything to the contrary in the preceding two sentences, the completion, execution and submission of such documentation (other than such documentation set forth in Section 2.19(e)(ii)(A), (ii)(B) and (ii)(D) below) shall not be required if in the Lender's reasonable judgment such completion, execution or submission would subject such Lender to any material unreimbursed cost or expense or would materially prejudice the legal or commercial position of such Lender.

(ii) Without limiting the generality of the foregoing,

(A) any Lender that is not a Foreign Lender shall deliver to the Borrower and the Administrative Agent on or prior to the date on which such Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), executed copies of IRS Form W-9 certifying that such Lender is exempt from U.S. federal backup withholding tax;

(B) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to the Borrower and the Administrative Agent (in such number of copies as shall be

requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), whichever of the following is applicable:

(1) in the case of a Foreign Lender claiming the benefits of an income tax treaty to which the United States is a party (x) with respect to payments of interest under any Loan Document, executed copies of IRS Form W-8BEN or W-8BEN-E establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the "interest" article of such tax treaty and (y) with respect to any other applicable payments under any Loan Document, IRS Form W-8BEN or W-8BEN-E establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the "business profits" or "other income" article of such tax treaty;

(2) executed copies of IRS Form W-8ECI;

(3) in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under Section 881(c) of the Tax Code, (x) a certificate substantially in the form of Exhibit I-1 to the effect that such Foreign Lender is not a "bank" within the meaning of Section 881(c)(3)(A) of the Tax Code, a "10 percent shareholder" of the Borrower within the meaning of Section 881(c)(3)(B) of the Tax Code, or a "controlled foreign corporation" described in Section 881(c)(3)(C) of the Tax Code (a "U.S. Tax Compliance Certificate") and (y) executed copies of IRS Form W-8BEN or W-8BEN-E; or

(4) to the extent a Foreign Lender is not the beneficial owner, executed copies of IRS Form W-8IMY, accompanied by IRS Form W-8ECI, IRS Form W-8BEN or W-8BEN-E, a U.S. Tax Compliance Certificate substantially in the form of Exhibit I-2 or Exhibit I-3, IRS Form W-9, and/or other certification documents from each beneficial owner, as applicable; provided that if the Foreign Lender is a partnership and one or more direct or indirect partners of such Foreign Lender are claiming the portfolio interest exemption, such Foreign Lender may provide a U.S. Tax Compliance Certificate substantially in the form of Exhibit I-4 on behalf of each such direct and indirect partner;

(C) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to the Borrower and the Administrative Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), executed copies of any other form prescribed by applicable law as a basis for claiming exemption from or a reduction in U.S. federal withholding Tax, duly completed, together with such supplementary documentation as may be prescribed by applicable law to permit the Borrower or the Administrative Agent to determine the withholding or deduction required to be made; and

(D) if a payment made to a Lender under any Loan Document would be subject to U.S. federal withholding Tax imposed by FATCA if such Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Tax Code, as applicable), such Lender shall deliver to the Borrower and the Administrative Agent at the time or times prescribed by law and at such time or times reasonably requested by the Borrower or the Administrative Agent such documentation prescribed by applicable law (including as prescribed by Section 1471(b)(3)(C)(i) of the Tax Code) and such additional documentation reasonably requested by the Borrower or the Administrative Agent as may be necessary for the Borrower and the Administrative Agent to comply with their obligations under FATCA and to determine that such Lender has complied with such Lender's obligations under FATCA or to determine the amount to deduct and withhold from such payment. Solely for purposes of this clause (D), "FATCA" shall include any amendments made to FATCA after the date of this Agreement.

Each Lender agrees that if any form or certification it previously delivered expires or becomes obsolete or inaccurate in any respect, it shall update such form or certification or promptly notify the Borrower and the Administrative Agent in writing of its legal inability to do so.

(f) In addition, each Administrative Agent (and any Person succeeding the Administrative Agent upon assignment or succession, if applicable) shall deliver to the Borrower, prior to (A) the date on which the first payment by the Borrower is due hereunder or (B) the first date on or after the date on which such Administrative Agent becomes a successor Administrative Agent on which payment by the Borrower is due hereunder, as applicable, two duly executed copies of (I) IRS Form W-9 certifying its exemption from U.S. federal backup withholding, (II) IRS Form W-8ECI certifying its exemption from U.S. federal backup withholding, or (III) IRS Form W-8IMY certifying that the Administrative Agent is a U.S. branch and intends to be treated as a U.S. person for purposes of withholding under Chapter 3 of the Tax Code pursuant to Section 1.1441-1(b)(2)(iv) of the Treasury regulations promulgated under the Tax Code, as applicable. On or before the date on which any such previously delivered documentation expires or becomes obsolete or invalid, after the occurrence of any event requiring a change in the most recent documentation previously delivered by it to the Borrower, and from time to time if reasonably requested by the Borrower, the Administrative Agent shall deliver to the Borrower two further copies of such applicable documentation. Notwithstanding the foregoing, the Administrative Agent (and any Person succeeding the Administrative Agent upon assignment or succession, if applicable) shall not be required to deliver any tax form or documentation it is not legally entitled to deliver.

(g) If the Administrative Agent or a Lender determines, in its sole discretion, that it has received a refund of any Indemnified Taxes or Other Taxes as to which it has been indemnified by the Borrower or any Company or with respect to which the Borrower or any Company has paid additional amounts pursuant to this Section 2.19, it shall pay to the Borrower or such Company an amount equal to such refund (but only to the extent of indemnity payments made, or additional amounts paid, by the Borrower or such Company under this Section 2.19 with respect to the Indemnified Taxes or Other Taxes giving rise to such refund), net of all out-of-pocket expenses (including Taxes) of the Administrative Agent or such Lender, as the case may be, and without interest (other than any interest paid by the relevant Governmental Authority with respect to such

refund); provided that the Borrower, upon the request of the Administrative Agent or such Lender, agrees to repay as soon as reasonably practicable the amount paid over to the Borrower or such Company (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) to the Administrative Agent or such Lender in the event the Administrative Agent or such Lender is required to repay such refund to such Governmental Authority. In such event, such Lender or the Administrative Agent, as the case may be, shall, at the Borrower's request, provide the Borrower with a copy of any notice of assessment or other evidence of the requirement to repay such refund received from the relevant Governmental Authority (provided that such Lender or the Administrative Agent may delete any information therein that it deems confidential). Notwithstanding anything to the contrary in this Section 2.19(g), in no event will the Administrative Agent or any Lender be required to pay any amount to the Borrower or any Company pursuant to this Section 2.19(g) the payment of which would place the Administrative Agent or such Lender in a less favorable net after-Tax position than the Administrative Agent or such Lender would have been in if the Tax subject to indemnification and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts with respect to such Tax had never been paid. This Section 2.19(g) shall not be construed to require the Administrative Agent or any Lender to make available its tax returns (or any other information relating to its taxes that it deems confidential) to the Borrower or any other Person.

(h) If the Borrower determines that a reasonable basis exists for contesting an Indemnified Tax or Other Tax for which a Loan Party has paid additional amounts or indemnification payments, each affected Lender or Administrative Agent, as the case may be, shall use commercially reasonable efforts to cooperate with the Borrower as the Borrower may reasonably request in writing in challenging such Tax. The Borrower shall indemnify and hold each Lender and Administrative Agent harmless against any reasonable expenses incurred by such person in connection with any request made by the Borrower pursuant to this Section 2.19(h). Nothing in this Section 2.19(h) shall obligate any Lender or Administrative Agent to take any action that such Person, in its sole judgment, determines may result in a material detriment to such Person or is otherwise inconsistent with the internal policies of such Person or any applicable legal or regulatory restrictions. Any resulting refund shall be governed by Section 2.19(g).

(i) Without prejudice to the survival of any other agreement of the parties hereunder, the agreements and obligations of the parties contained in this Section 2.19 shall survive termination of this Agreement and the payment in full of the Obligations and all other amounts payable under any Loan Document, the resignation or replacement of the Administrative Agent or any assignment of rights by, or replacement of, any Lender.

(j) For purposes of this Section 2.19, any reference to "applicable law" shall include FATCA.

Section 2.20. Obligation to Mitigate. Each Lender agrees that, as promptly as practicable after the officer of such Lender responsible for administering its Loans or Letters of Credit, as the case may be, becomes aware of the occurrence of an event or the existence of a condition that would cause such Lender to become an Affected Lender or that would entitle such Lender to receive payments under Section 2.17, Section 2.18 or Section 2.19, it will, to the extent not inconsistent

with the internal policies of such Lender and any applicable legal or regulatory restrictions, use reasonable efforts (at the request of the Borrower so long as the Borrower has received notice of such occurrence or existence) to (a) make, issue, fund or maintain its Credit Extensions, including any Affected Loans, through another office of such Lender, or (b) take such other measures as such Lender may deem reasonable, if as a result thereof the circumstances which would cause such Lender to be an Affected Lender would cease to exist or the additional amounts which would otherwise be required to be paid to such Lender pursuant to Section 2.17, Section 2.18 or Section 2.19 would be reduced and if, as determined by such Lender in good faith but in its sole discretion, the making, issuing, funding or maintaining of its Commitments, Loans or Letters of Credit through such other office or in accordance with such other measures, as the case may be, (i) would not subject such Lender to any unreimbursed cost or expense and (ii) would not, in the sole discretion of such Lender, be otherwise disadvantageous to such Lender; provided that such Lender will not be obligated to utilize such other office pursuant to this Section 2.20 unless the Borrower agrees to pay all incremental expenses incurred by such Lender as a result of utilizing such other office as described in clause (a) above. A certificate as to the amount of any such expenses payable by the Borrower pursuant to this Section 2.20 (setting forth in reasonable detail the basis for requesting such amount) submitted by such Lender to the Borrower (with a copy to the Administrative Agent) shall be conclusive absent manifest error.

Section 2.21. Defaulting Lenders.

(a) Defaulting Lender Adjustments. Notwithstanding anything to the contrary contained in this Agreement, if any Lender becomes a Defaulting Lender, then, until such time as such Lender is no longer a Defaulting Lender, to the extent permitted by applicable law:

(i) Waivers and Amendments. Such Defaulting Lender's right to approve or disapprove any amendment, waiver or consent with respect to this Agreement shall be restricted as set forth in the definition of Required Lenders.

(ii) Defaulting Lender Waterfall. Any payment of principal, interest, Fees or other amounts received by the Administrative Agent for the account of such Defaulting Lender (whether voluntary or mandatory, at maturity, pursuant to Article VII or otherwise) or received by the Administrative Agent from a Defaulting Lender pursuant to Section 9.06 shall be applied at such time or times as may be determined by the Administrative Agent as follows: *first*, to the payment of any amounts owing by such Defaulting Lender to the Administrative Agent hereunder; *second*, to the payment on a *pro rata* basis of any amounts owing by such Defaulting Lender to the Issuing Bank; *third*, to Cash Collateralize the Issuing Bank's Fronting Exposure with respect to such Defaulting Lender in accordance with Section 2.23; *fourth*, as the Borrower may request (so long as no Default under Section 7.01(c) or Section 7.01(h)) nor any Event of Default has occurred and is continuing), to the funding of any Loan in respect of which such Defaulting Lender has failed to fund its portion thereof as required by this Agreement, as determined by the Administrative Agent; *fifth*, if so determined by the Administrative Agent and the Borrower, to be held in a deposit account and released pro rata in order to (x) satisfy such Defaulting Lender's potential future funding obligations with respect to Loans under this Agreement and (y) Cash Collateralize the Issuing Bank's future

Fronting Exposure with respect to such Defaulting Lender with respect to future Letters of Credit issued under this Agreement, in accordance with Section 2.23; *sixth*, to the payment of any amounts owing to the Lenders or the Issuing Bank as a result of any judgment of a court of competent jurisdiction obtained by any Lender or the Issuing Bank against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; *seventh*, so long as no Default under Section 7.01(c) or (h) nor any Event of Default has occurred and is continuing, to the payment of any amounts owing to the Borrower as a result of any judgment of a court of competent jurisdiction obtained by the Borrower against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; and *eighth*, to such Defaulting Lender or as otherwise directed by a court of competent jurisdiction; provided that if (x) such payment is a payment of the principal amount of any Loans or disbursements with respect to Letters of Credit in respect of which such Defaulting Lender has not fully funded its appropriate share, and (y) such Loans were made or the related Letters of Credit were issued at a time when the conditions set forth in Section 4.02 were satisfied or waived, such payment shall be applied solely to pay the Loans of, and disbursements with respect to Letters of Credit owed to, all Non-Defaulting Lenders on a pro rata basis prior to being applied to the payment of any Loans of, or disbursements with respect to Letters of Credit owed to, such Defaulting Lender until such time as all Loans and funded and unfunded participations in Letter of Credit Obligations are held by the Lenders pro rata in accordance with their Loan Exposure without giving effect to Section 2.21(a)(iv). Any payments, prepayments or other amounts paid or payable to a Defaulting Lender that are applied (or held) to pay amounts owed by a Defaulting Lender or to post Cash Collateral pursuant to this Section 2.21(a) shall be deemed paid to and redirected by such Defaulting Lender, and each Lender irrevocably consents hereto.

(iii) Certain Fees. (A) No Defaulting Lender shall be entitled to receive the commitment fees described in Section 2.10(b)(i) for any period during which that Lender is a Defaulting Lender (and the Borrower shall not be required to pay any such fee that otherwise would have been required to have been paid to that Defaulting Lender).

(B) Each Defaulting Lender shall be entitled to receive the letter of credit Fees described in Section 2.10(b)(ii) for any period during which that Lender is a Defaulting Lender only to the extent allocable to its Pro Rata Share of the stated amount of Letters of Credit for which it has provided Cash Collateral pursuant to Section 2.23.

(C) With respect to any letter of credit Fees not required to be paid to any Defaulting Lender pursuant to clause (B) above, the Borrower shall (x) pay to each Non-Defaulting Lender that portion of any such Fee otherwise payable to such Defaulting Lender with respect to such Defaulting Lender's participation in the Letter of Credit that has been reallocated to such Non-Defaulting Lender pursuant to clause (iv) below, (y) pay to the Issuing Bank the amount of any such Fee otherwise payable to such Defaulting Lender to the extent allocable to the Issuing Bank's Fronting Exposure to such Defaulting Lender, and (z) not be required to pay the remaining amount of any such Fee.

(iv) Reallocation of Participations to Reduce Fronting Exposure. All or any part of such Defaulting Lender's participation in Letter of Credit Obligations shall be reallocated among the Non-Defaulting Lenders in accordance with their respective Pro Rata Shares (calculated without regard to such Defaulting Lender's Commitment) but only to the extent that such reallocation does not cause the aggregate Loan Exposure of any Non-Defaulting Lender to exceed such Non-Defaulting Lender's Commitment. Subject to Section 9.31, no reallocation hereunder shall constitute a waiver or release of any claim of any party hereunder against a Defaulting Lender arising from that Lender having become a Defaulting Lender, including any claim of a Non-Defaulting Lender as a result of such Non-Defaulting Lender's increased exposure following such reallocation.

(v) Cash Collateral. If the reallocation described in clause (iv) above cannot, or can only partially, be effected, the Borrower shall, without prejudice to any right or remedy available to it hereunder or under law, Cash Collateralize the Issuing Bank's Fronting Exposure (after giving effect to clause (iii)(C) and clause (iv) above) in accordance with the procedures set forth in Section 2.23.

(b) Defaulting Lender Cure. If the Borrower, the Administrative Agent and the Issuing Bank agree in writing that a Lender is no longer a Defaulting Lender, the Administrative Agent will so notify the parties hereto, whereupon as of the effective date specified in such notice and subject to any conditions set forth therein (with may include arrangements with respect to any Cash Collateral), that Lender will, to the extent applicable, purchase at par that portion of outstanding Loans of the other Lenders or take such other actions as the Administrative Agent may determine to be necessary to cause the Loans and funded and unfunded participations in Letters of Credit to be held pro rata by the Lenders in accordance with the Commitments under the Facility (without giving effect to Section 2.21(a)(iv), whereupon such Lender will cease to be a Defaulting Lender; provided that no adjustments will be made retroactively with respect to Fees accrued or payments made by or on behalf of the Borrower while that Lender was a Defaulting Lender; and provided, further, that except to the extent otherwise expressly agreed by the affected parties, no change hereunder from Defaulting Lender to Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender's having been a Defaulting Lender.

(c) New Letters of Credit. So long as any Lender is a Defaulting Lender, the Issuing Bank shall not be required to issue, extend, renew or increase any Letter of Credit unless it is satisfied that it will have no Fronting Exposure after giving effect thereto.

Section 2.22. Removal or Replacement of a Lender. Anything contained herein to the contrary notwithstanding, in the event that: (a) (i) any Lender (an "Increased-Cost Lender") shall give notice to the Borrower that such Lender is an Affected Lender or that such Lender is entitled to receive payments under Section 2.17 (other than Section 2.17(c)), Section 2.18 or Section 2.19, (ii) the circumstances which entitle such Lender to receive such payments shall remain in effect, and (iii) such Lender shall fail to withdraw such notice within five (5) Business Days after the Borrower's request for such withdrawal; (b) any Lender is a Defaulting Lender; or (c) in connection with any proposed amendment, modification, termination, waiver or consent with respect to any of the provisions of this Agreement that requires the consent of 100% of the Lenders or 100% of the

Lenders directly affected thereby as contemplated by Section 9.08(b), the consent of the Lenders collectively having Aggregate Exposure representing more than 50% of the Aggregate Exposure of all Lenders required to consent to such matter shall have been obtained but the consent of one or more of such other Lenders (each a "Non-Consenting Lender") whose consent is required shall not have been obtained; then, with respect to each such Increased-Cost Lender, Defaulting Lender or Non-Consenting Lender (the "Terminated Lender"), the Borrower may, by giving written notice to the Administrative Agent and any Terminated Lender of its election to do so, elect to cause such Terminated Lender (and such Terminated Lender hereby irrevocably agrees) to assign its outstanding Loans and Commitments, if any, in full to one or more Eligible Assignees (each a "Replacement Lender") in accordance with the provisions of Section 9.04 (provided that in the event such Terminated Lender does not execute an Assignment and Acceptance within five (5) Business Days after having received a request therefor, such Terminated Lender shall be deemed to have consented to such Assignment and Acceptance) and the Borrower shall pay any reasonable fees payable thereunder in connection with such assignment (including any processing or recordation fees payable to the Administrative Agent pursuant to Section 9.04(c)); provided, (1) on the date of such assignment, the Replacement Lender shall pay to the Terminated Lender an amount equal to the sum of (A) an amount equal to the principal of, and all accrued interest on, all outstanding Loans of the Terminated Lender, (B) an amount equal to all unreimbursed drawings under Letters of Credit that have been funded by such Terminated Lender, together with all then unpaid interest with respect thereto at such time and (C) an amount equal to all accrued, but theretofore unpaid Fees owing to such Terminated Lender pursuant to Section 2.10; (2) on the date of such assignment, the Borrower shall pay any amounts payable to such Terminated Lender pursuant to Section 2.17(c), Section 2.18 or Section 2.19 or otherwise as if it were a prepayment and (3) in the event such Terminated Lender is a Non-Consenting Lender, each Replacement Lender shall consent, at the time of such assignment, to each matter in respect of which such Terminated Lender was a Non-Consenting Lender; provided, the Borrower may not make such election with respect to any Terminated Lender that is also an Issuing Bank unless, prior to the effectiveness of such election, the Borrower shall have caused each outstanding Letter of Credit issued by such Terminated Lender to be cancelled or Cash Collateralized. Upon the prepayment of all amounts owing to any Terminated Lender and the termination of such Terminated Lender's undrawn Commitments, if any, such Terminated Lender shall no longer constitute a "Lender" for purposes hereof; provided, any rights of such Terminated Lender to indemnification hereunder shall survive as to such Terminated Lender.

Section 2.23. Cash Collateral. At any time that there shall exist a Defaulting Lender, within three Business Days following the written request of the Administrative Agent or the Issuing Bank (with a copy to the Administrative Agent) the Borrower shall Cash Collateralize the Issuing Bank's Fronting Exposure with respect to such Defaulting Lender (determined after giving effect to Section 2.21(a)(iii)(C), Section 2.21(a)(iv) and any Cash Collateral provided by such Defaulting Lender) in an amount not less than the Minimum Collateral Amount.

(a) Grant of Security Interest. The Borrower, and to the extent provided by any Defaulting Lender, such Defaulting Lender, hereby grants to the Administrative Agent, for the benefit of the Issuing Bank, and agrees to maintain, a first priority security interest in all such Cash Collateral as security for the Defaulting Lender's obligation to fund participations in respect of Letter of Credit Obligations, to be applied pursuant to clause (b) below. If at any time the

Administrative Agent determines that Cash Collateral is subject to any right or claim of any Person other than the Administrative Agent and the Issuing Bank as herein provided (other than Liens described in Section 6.02(n)), or that the total amount of such Cash Collateral is less than the Minimum Collateral Amount, the Borrower will, promptly upon demand by the Administrative Agent, pay or provide to the Administrative Agent additional Cash Collateral in an amount sufficient to eliminate such deficiency (after giving effect to any Cash Collateral provided by the Defaulting Lender).

(b) Application. Notwithstanding anything to the contrary contained in this Agreement, Cash Collateral provided under this Section 2.23 or Section 2.21 in respect of Letters of Credit shall be applied to the satisfaction of the Defaulting Lender's obligation to fund participations in respect of Letter of Credit Obligations (including, as to Cash Collateral provided by a Defaulting Lender, any interest accrued on such obligation) for which the Cash Collateral was so provided, prior to any other application of such property as may otherwise be provided for herein.

(c) Termination of Requirement. Cash Collateral (or the appropriate portion thereof) provided to reduce the Issuing Bank's Fronting Exposure shall no longer be required to be held as Cash Collateral pursuant to this Section 2.23 and, unless otherwise agreed pursuant to the proviso below, shall be returned to the Person providing such Cash Collateral following (i) the elimination of the applicable Fronting Exposure (including by the termination of Defaulting Lender status of the applicable Lender), or (ii) the determination by the Administrative Agent and the Issuing Bank that there exists excess Cash Collateral; provided that, subject to Section 2.21, the Person providing Cash Collateral and the Issuing Bank may agree that Cash Collateral shall be held to support future anticipated Fronting Exposure or other obligations and provided further that to the extent that such Cash Collateral was provided by a Loan Party, such Cash Collateral shall remain subject to the security interest granted pursuant to the Loan Documents.

ARTICLE III.

REPRESENTATIONS AND WARRANTIES

The Borrower represents and warrants to the Lead Arranger, the Agents, the Issuing Bank and each of the Lenders that:

Section 3.01. Organization; Powers. Each of the Loan Parties (a) is duly organized or formed, validly existing and in good standing under the laws of the jurisdiction of its organization or formation, (b) has all requisite power and authority to own and operate its property and assets, to lease the property it operates as lessee and to carry on its business as now conducted and as proposed to be conducted, (c) is qualified to do business in, and is in good standing in, every jurisdiction where such qualification is required, except where the failure to so qualify, individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect and (d) has the power and authority to execute, deliver and perform its obligations under each Loan Document and each Material Contract, in each case to which it is or will be a party, including, in the case of the Borrower, to borrow hereunder, in the case of each Loan Party, to grant the Liens contemplated to be granted by it under the Security Documents, and, in the case of each Subsidiary Guarantor and the Borrower, to Guarantee the Obligations as contemplated by the Subsidiary Guaranty.

Section 3.02. **Authorization; No Conflicts**. The Transactions (a) have been duly authorized by all requisite corporate, partnership or limited liability company and, if required, stockholder, partner or member action of each Loan Party and (b) will not (i) violate (A) any provision of law, statute, rule or regulation in any material respect, (B) any Governing Document of any Loan Party, (C) any order of any Governmental Authority or arbitrator or (D) any Contractual Obligation of any Loan Party which, in the case of this clause (D) only, could reasonably be expected to have a Material Adverse Effect, (ii) be in conflict with, result in a breach of or constitute (alone or with notice or lapse of time or both) a default under, or give rise to any right to accelerate or to require the prepayment, repurchase or redemption of any obligation under any Contractual Obligation of any Loan Party which, in the case of this clause (ii) only, could reasonably be expected to have a Material Adverse Effect or (iii) result in the creation or imposition of any Lien upon or with respect to any property or assets now owned or hereafter acquired by any Loan Party (other than Liens created under the Security Documents and the Term Facility Documents (subject to the Intercreditor Agreement)).

Section 3.03. **Enforceability**. This Agreement has been duly executed and delivered by the Borrower and constitutes, and each other Loan Document and Material Contract when executed and delivered by each of the Loan Parties that are party thereto will constitute, a legal, valid and binding obligation of such Person enforceable against such Person in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting creditors' rights generally and subject to general principles of equity, regardless of whether considered in a proceeding in equity or at law.

Section 3.04. **Governmental and other Approvals**. No consent or approval of, registration or filing with, Permit from, notice to, or any other action by, any Governmental Authority or third party is or will be required in connection with (a) the execution, delivery or performance by, or enforcement against, any Loan Party of this Agreement or any other Loan Document or for the consummation of the Transactions or for the validity or enforceability of the Loan Documents, (b) the grant by any Loan Party of the Liens granted by it pursuant to the Security Documents, (c) the perfection or maintenance of the Liens created under the Security Documents (including the first priority nature thereof, subject to Senior Permitted Liens) or (d) the exercise by the Administrative Agent or any Lender of its rights under the Loan Documents or the remedies in respect of the Collateral pursuant to the Security Documents, except for (i) the filing of UCC financing statements and filings with the United States Patent and Trademark Office and the United States Copyright Office, (ii) recordation of the Mortgages and Assignments of Leases and Rents, (iii) such consents, approvals, registrations, filings, Permits, notices or other actions (including all Gaming Licenses and other necessary regulatory and gaming approvals and shareholder approvals) as have been made or obtained and are in full force and effect or are set forth on Schedule 3.04, (iv) approvals, consents, registrations, filings, authorization or Permits required from any Governmental Authority, including Gaming Authorities, in connection with an exercise of remedies under any of the Loan Documents (including as contemplated by Section 9.28) and (v) in the case of clause (d) above, as otherwise set forth in the Intercreditor Agreement.

Section 3.05. **Financial Statements; Absence of Undisclosed Liabilities**. All financial statements delivered pursuant to Section 5.01(b) and Section 5.01(c) present fairly in all material

respects the financial condition and results of operations and cash flows of the applicable Persons as of such dates and for such periods. Such financial statements were prepared in accordance with GAAP consistently applied (taking into account changes in GAAP during such period) through the applicable period except for the absence of footnotes and year-end adjustments for any financial statements other than those prepared for a Fiscal Year end.

Section 3.06. No Material Adverse Change. No event, change or condition has occurred since the Closing Date, that has caused, or could reasonably be expected to cause, either individually or when taken together with any other events, changes or conditions, a Material Adverse Effect.

Section 3.07. Title to Properties; Possession Under Leases.

(a) Each of the Loan Parties has good title to, or valid leasehold interests in, all its material properties and assets (including all Real Property), except as set forth on the title policies delivered pursuant to Section 4.01(l), Section 5.11 or Section 5.12, and except for Permitted Liens. Each parcel of Real Property is free from defects that materially and adversely affect, or could reasonably be expected to materially and adversely affect, such parcel's suitability for the purposes for which it is contemplated to be used under the Loan Documents and the Project Documents. Each parcel of Real Property and the use thereof (both presently and as contemplated under the Loan Documents and the Project Documents) complies with all applicable laws (including building and zoning ordinances and codes (but excluding those applicable laws subject to Section 3.17)) and with all insurance requirements, except for any non-compliance which could not reasonably be expected to have a Material Adverse Effect.

(b) Each of the Loan Parties, and, to the knowledge of the Borrower, each other party thereto, has complied with all obligations under all leases of Real Property to which it is a party and all such leases are legal, valid, binding and in full force and effect and are enforceable against the Loan Parties party thereto and, to the Borrower's knowledge, against each other party thereto in accordance with their terms except, in each case, to the extent any such non-compliance or unenforceability could not reasonably be expected to have a Material Adverse Effect. Each of the Loan Parties enjoys peaceful and undisturbed possession under all such material leases pursuant to which a Loan Party is the tenant or subtenant, if any. Except to the extent constituting a Permitted Lien, no claim is being asserted or, to the knowledge of the Borrower, threatened, in writing with respect to any lease payment under any lease pursuant to which a Loan Party is the tenant or subtenant, if any, except any claim which could not reasonably be expected to have a Material Adverse Effect. Other than as set forth on Schedule 3.07, the IDA Documents and space leases otherwise permitted pursuant to the Loan Documents or pursuant to the applicable Permitted Liens, none of the Real Property is subject to any lease, sublease, license or other agreement pursuant to which any Loan Party has granted to any Person any material right to the use, occupancy, possession or enjoyment of the Real Property or any portion thereof. The Borrower has delivered to the Administrative Agent true, complete and correct copies of all leases (whether as landlord or tenant) of Real Property.

(c) None of the Loan Parties has received any written notice of, nor has any knowledge of, any pending or contemplated condemnation proceeding affecting any material portion of any

Real Property or any sale or disposition of any material portion of any Real Property in lieu of condemnation.

(d) Other than as described on Schedule 3.07 or as permitted pursuant to Section 6.09, none of the Loan Parties is obligated under any written right of first refusal, option or other contractual right to sell, assign or otherwise dispose of any material portion of any Real Property or any interest therein.

(e) None of the Loan Parties has suffered, permitted or initiated the joint assessment of any Real Property owned by such Person with any other real property owned by another Person and constituting a separate tax lot. Each owned parcel of Real Property is comprised of one or more parcels, each of which constitutes a separate tax lot and none of which constitutes a portion of any other tax lot.

(f) (i) Each parcel of Real Property has adequate rights of access to public ways or irrevocable and perpetual recorded rights of way or easements to public rights of way to permit the Real Property to be used for its intended purpose (as contemplated under the Loan Documents and the Project Documents) and is (or will be when required for the construction or operation of the Project) served by installed, operating and adequate water, electric, gas, telephone, sewer, sanitary sewer, storm drain facilities and other public utilities necessary for the uses contemplated under the Loan Documents and the Project Documents; (ii) all public utilities necessary to the use and enjoyment of each parcel of Real Property as contemplated under the Loan Documents and the Project Documents are (or will be when required for the construction or operation of the Project) located in the public right of way abutting the premises, and all such utilities are (or will be when required for the construction or operation of the Project) connected so as to serve such Real Property without passing over other Property except pursuant to recorded easements, for land of the utility company providing such utility service or, in the case of leased Real Property, contiguous land owned by the lessor of such leased Real Property; (iii) each parcel of Real Property, including each leased parcel, has (or will have, when required for the construction or operation of the Project) adequate available parking to meet applicable legal and operating requirements; and (iv) other than Permitted Liens, no building or structure upon any Real Property or any material appurtenance thereto or material equipment thereon, or the use, operation or maintenance thereof, violates any restrictive covenant or encroaches on any easement or on any Property owned by others, which violation or encroachment materially interferes with the current use or could materially adversely affect the value of such building, structure or appurtenance.

(g) Notwithstanding anything in this Agreement to the contrary, for purposes of this Section 3.07 only, the Excluded Leased Real Property and any other immaterial Real Property not subject to a Mortgage shall not be deemed to constitute Real Property.

Section 3.08. Subsidiaries. Schedule 3.08 sets forth, as of the Closing Date, a list of the Borrower and all Subsidiaries of any Loan Party, including the Borrower's and each such Subsidiary's exact legal name (as reflected in the Borrower's and such Subsidiary's certificate or articles of incorporation, organization or other constitutive documents) and jurisdiction of incorporation or formation and the percentage ownership interest of each Person, as applicable, therein. As of the Closing Date, the Capital Stock so indicated on Schedule 3.08 is fully paid and

non-assessable and is owned by each Person described on such schedule, as applicable, free and clear of all Liens (other than Liens created under the Security Documents and the Term Facility Documents (subject to the Intercreditor Agreement)). The Equity Pledgor owns 100% of the Capital Stock in the Borrower, free and clear of all Liens (other than Liens created under the Equity Pledge Agreement, Permitted Liens (as defined in the Equity Pledge Agreement) and the Liens created under the Term Facility Documents (subject to the Intercreditor Agreement)), and all such Capital Stock is fully paid and non-assessable.

Section 3.09. No Litigation; Compliance with Laws.

(a) Except as set forth on Schedule 3.09, as of the Closing Date, there are no actions, suits or proceedings at law or in equity or by or before any arbitrator or Governmental Authority now pending or, to the knowledge of the Borrower, threatened in writing against any of the Loan Parties or any business, property or rights of any Loan Party, and no such actions, suits or proceedings could reasonably be expected to have a Material Adverse Effect.

(b) There are no actions, suits or proceedings at law or in equity or by or before any arbitrator or Governmental Authority now pending or, to the knowledge of the Borrower, threatened in writing against any of the Companies or any Unrestricted Subsidiary or any business, property or rights of any such Person (i) that could reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect or (ii) that are non-frivolous and challenge the validity or enforceability of any Loan Document or any Lien granted thereunder.

(c) None of the Loan Parties is in violation of, nor will the continued operation of their material properties and assets as currently conducted or as contemplated under the Loan Documents and the Project Documents violate, any applicable law (including any laws relating to campaign finance and contributions to politicians, Gaming Laws and liquor laws), rule or regulation (including any zoning, building, ordinance, code or approval or any building permits) or is in default with respect to any judgment, writ, injunction, decree or order of any Governmental Authority binding on it, where such violation or default, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect.

(d) None of the Loan Parties is in default in the performance, observance or fulfillment of any of the obligations, covenants or conditions contained in any of its Contractual Obligations, and no condition exists which, with the giving of notice or the lapse of time or both, could constitute such a default, except where the consequences, direct or indirect, of such default or defaults, if any, individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect.

(e) Except with respect to any certificates of occupancy for any improvements existing on the Closing Date, the failure of which to be in effect, individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect, any required certificates of occupancy are in effect for each Mortgaged Property as constructed and/or operated as of the time this representation is made or deemed made, and true and complete copies of such certificates of occupancy have been delivered or made available to the Collateral Agent as mortgagee with respect to each Mortgaged Property.

Section 3.10. **No Default**. No Default or Event of Default has occurred and is continuing.

Section 3.11. **Federal Reserve Regulations**.

(a) None of the Loan Parties is engaged principally, or as one of its important activities, in the business of extending credit for the purpose of buying or carrying Margin Stock.

(b) No part of the proceeds of any Loan and no Letter of Credit will be used, whether directly or indirectly, and whether immediately, incidentally or ultimately, for purchasing or carrying Margin Stock or for the purpose of purchasing, carrying or trading in any securities under such circumstances as to involve any Loan Party in a violation of Regulation X or to involve any broker or dealer in a violation of Regulation T. No Indebtedness being reduced or retired out of the proceeds of any Loans was or will be incurred for the purpose of purchasing or carrying any Margin Stock. Following the application of the proceeds of the Loans, Margin Stock will not constitute more than 25% of the value of the assets of the Loan Parties. None of the transactions contemplated by this Agreement will violate or result in the violation of any of the provisions of the regulations of the Board, including Regulation T, U or X.

Section 3.12. **Investment Company Act**. None of the Equity Pledgor nor any Loan Party is required to be registered as an "investment company" as defined in, or subject to regulation under, the Investment Company Act of 1940, as amended.

Section 3.13. **Use of Proceeds; Letters of Credit**.

(a) The Borrower and each other applicable Loan Party will use the proceeds of the Loans solely for working capital needs, capital expenditures and for other general corporate purposes of the Borrower and its Subsidiaries (other than Project Costs and Golf Course Expenditures (as defined in the Term Loan Agreement)).

(b) The Borrower and each other applicable Loan Party will request the issuance of Letters of Credit to support payment and other obligations incurred by the Borrower and its Subsidiaries in the ordinary course of business.

(c) The proceeds of the Loans and Letters of Credit will not be used, directly or indirectly, by the Loan Parties or their respective Subsidiaries or Unrestricted Subsidiaries in violation of Anti-Corruption Laws or Sanctions.

Section 3.14. **Tax Returns**. Except as would not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect, the Equity Pledgor and each of its Subsidiaries has timely filed or timely caused to be filed all Federal and state income tax returns and other tax returns or materials required to have been filed by it (where any such tax return could give rise to a liability imposed on the Borrower or any of its Subsidiaries) and all such tax returns and materials are correct and complete. Except as would not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect, the Equity Pledgor and each of its Subsidiaries has timely paid or timely caused to be paid all Federal, state and other Taxes due and payable by it, if any (in each case, where such Tax or assessment could be a liability of or be imposed

on the Borrower or any of its Subsidiaries), and all assessments received by it, if any, except any Taxes that are being contested in good faith by appropriate proceedings and for which such Loan Party shall have set aside on its books adequate reserves in accordance with GAAP. None of the Equity Pledgor or its Subsidiaries intends to treat the Loans, the Transactions, or any of the other transactions contemplated by any Loan Documents as being a "reportable transaction" (within the meaning of Treasury Regulation Section 1.6011-4).

Section 3.15. **No Material Misstatements**. No factual information (other than projections, pro forma financial information, forward looking information, and information of a general economic nature, as to which no representation is made under this Section) furnished by or on behalf of any Company in writing to the Lead Arranger, the Administrative Agent or any Lender for use in connection with the Transactions and other transactions contemplated by the Loan Documents or delivered pursuant thereto contained or contains any material misstatement of fact or omitted or omits to state any fact necessary to make the statements therein, in the light of the circumstances under which they were or are made, not misleading in any material respect, in each case, taken as a whole; provided that to the extent any such information was based upon or constitutes a forecast or projection, the Borrower represents only that it acted in good faith and utilized assumptions believed by it at the time initially furnished to the Lead Arranger, the Administrative Agent, or any Lender to be reasonable in light of current conditions in the preparation of such information, it being acknowledged and agreed by the Administrative Agent, the Lead Arranger and the Lenders that projections as to future events are not to be viewed as facts and that the actual results during the period or periods covered by such projections may differ from the projected results and that such differences may be material.

Section 3.16. **Employee Benefit Plans**. Except as could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, each of the Loan Parties and each of their respective ERISA Affiliates and each Benefit Plan (if any) is in compliance with the applicable provisions of ERISA and the Tax Code and the regulations and published interpretations thereunder. No ERISA Event has occurred or, to the knowledge of the Borrower, is reasonably expected to occur that, when taken together with all other such ERISA Events, could reasonably be expected to have a Material Adverse Effect. There are no pending or, to the knowledge of the Borrower written threats of claims, actions or lawsuits, or action by any participant or Governmental Authority, with respect to any Benefit Plan or other employee benefit plan as defined in Section 3(3) of ERISA (other than a Multiemployer Plan, if any) maintained or contributed to by any of the Loan Parties or any of their respective ERISA Affiliates that, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect.

Section 3.17. **Environmental Matters**. Except with respect to any matters that, individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect and, other than as described on Schedule 3.17, that, individually or in the aggregate, could not reasonably be expected to result in a material liability to the Loan Parties, none of the Loan Parties or Unrestricted Subsidiaries:

(a) has failed to comply with any Environmental Law or to take, in a timely manner, all actions necessary to obtain, maintain, renew and comply with any Environmental Permit applicable

to it or any Real Property, and all such Environmental Permits are in full force and effect and not subject to any administrative or judicial appeal;

(b) has become a party to any governmental, administrative or judicial proceeding under Environmental Law or possesses knowledge of any such proceeding that has been threatened in writing against it;

(c) has received written notice of, become subject to, any Environmental Claim or Environmental Liability applicable to it or any Real Property other than those which have been fully and finally resolved and for which no obligations remain outstanding;

(d) possesses knowledge that any Real Property (i) is subject to any Lien, restriction on ownership, occupancy, use or transferability imposed pursuant to Environmental Law or (ii) contains or previously contained Hazardous Materials of a form or type or in a quantity or location, in each case that could reasonably be expected to result in any Environmental Liability of any Loan Party;

(e) possesses knowledge that there has been a Release or threat of Release of Hazardous Materials at or from the Real Properties (or from any facilities or other properties formerly owned, leased or operated by any Loan Party or any Unrestricted Subsidiary) in violation of, or in amounts or in a manner that could reasonably be expected to give rise to any Environmental Liability;

(f) has generated, treated, stored, transported, or Released Hazardous Materials in violation of, or in a manner or to a location, or has otherwise engaged in any Hazardous Materials Activity, that, in any such case, could reasonably be expected to give rise to any Environmental Liability; or

(g) has, pursuant to any order, decree, judgment or agreement by which it is bound, assumed the Environmental Liability of any other Person.

Any other representation or warranty contained in this Agreement notwithstanding, the representations and warranties contained in this Section 3.17 constitute the sole representations and warranties of the Loan Parties under this Agreement relating to any Environmental Law or Environmental Liability.

Section 3.18. Insurance. Schedule 3.18 sets forth a true and correct description in all material respects of all insurance maintained by or on behalf of the Loan Parties as of the Closing Date. As of the Closing Date, such insurance is in full force and effect and all premiums (or, if applicable, all installments thereof due on or before the Closing Date) have been duly paid and such insurance is provided in such amounts and covering such risks and liabilities (and with such deductibles, retentions and exclusions) as are in accordance with the terms of Exhibit K and with normal and prudent industry practice. None of the Loan Parties (a) has received notice from any insurer (or any agent thereof) that substantial capital improvements or other substantial expenditures will have to be made in order to continue such insurance (in each case, unless such improvements or expenditures are permitted by the Disbursement Agreements or are, after taking into consideration other reasonably anticipated Consolidated Capital Expenditures during the period in question, reasonably expected to be permitted pursuant to Section 6.08(c)) or (b) has any reason to believe

that it will not be able to (i) maintain (or obtain when and as required) the insurance coverage required to be maintained under the Loan Documents or (ii) renew its existing coverage as and when such coverage expires or to obtain similar coverage from similar insurers.

Section 3.19. Security Documents.

(a) Each of the Pledge and Security Agreement and the Equity Pledge Agreement is effective to create in favor of the Collateral Agent, for the ratable benefit of the Secured Parties, a legal, valid, binding and enforceable security interest in the Collateral described therein and (i) in the case of the Pledged Collateral, upon the earlier of (A) delivery of such Pledged Collateral to the Collateral Agent and (B) filing of financing statements in appropriate form in the offices specified on Schedule 3.19(a) and (ii) in the case of all other Collateral described therein (other than Intellectual Property Collateral, the Real Property and Collateral of the type described in clause (d) below), when financing statements in appropriate form are filed in the offices specified on Schedule 3.19(a), and the other actions described in Section 4.1(a)(iv) of the Pledge and Security Agreement have been taken each of the Pledge and Security Agreement and the Equity Pledge Agreement shall constitute a fully perfected Lien on, and security interest in, all right, title and interest of the Loan Parties and the Equity Pledgor in such Collateral (other than any such Collateral for which the Lien thereon is expressly not required to be perfected pursuant to such Loan Documents and with respect to Intellectual Property Collateral, only if and to the extent perfection may be achieved in the United States by such filings), as security for the Obligations, in each case subject only to Permitted Liens and prior and superior in right to the rights of any other Person (except with respect to Senior Permitted Liens).

(b) When each Intellectual Property Security Agreement is filed in the United States Patent and Trademark Office or the United States Copyright Office, as applicable, together with financing statements in appropriate form filed in the offices specified in Schedule 3.19(a), such Intellectual Property Security Agreement shall constitute a fully perfected Lien on (if and to the extent perfection may be achieved in the United States by such filings), and security interest in, all right, title and interest of the grantors thereunder in the Intellectual Property Collateral registered in the United States, as security for the Obligations, in each case subject only to Permitted Liens and prior and superior in right to the right of any other Person (except with respect to Senior Permitted Liens) (it being understood that subsequent recordings in the United States Patent and Trademark Office and the United States Copyright Office may be necessary to perfect a lien on registered trademarks and patents, trademark and patent applications and copyrights acquired by the grantors after the date hereof).

(c) Each of the Mortgages is effective to create in favor of the Collateral Agent, for the ratable benefit of the Secured Parties, a legal, valid, binding and enforceable Lien on, and security interest in, all of the applicable Loan Party's right, title and interest in and to the Mortgaged Property, and when the Mortgages are recorded in the offices specified on Schedule 3.19(c) and all applicable mortgage recording taxes and recording charges are paid, each such Mortgage shall constitute a perfected Lien on, and security interest in, all right, title and interest of the grantors thereof in such Mortgaged Property, as security for the Obligations, in each case subject only to Permitted Liens

and prior and superior in right to the rights of any other Person (except with respect to Senior Permitted Liens).

(d) Each of the Control Agreements, taken together with the Pledge and Security Agreement, is effective to create and perfect in favor of the Collateral Agent, for the ratable benefit of the Secured Parties, a legal, valid, binding and enforceable security interest in the Investment Accounts described therein. Upon the execution of the Control Agreements and the Pledge and Security Agreement, such Security Documents shall constitute perfected Liens on, and security interests in, all right, title and interest of the Loan Parties in the Investment Accounts described therein, as security for the Obligations, in each case subject only to Permitted Liens and prior and superior in right to the rights of any other Person (except with respect to Senior Permitted Liens).

Section 3.20. Location of Real Property. Schedule 3.20 lists completely and correctly, in all material respects, as of the Closing Date, all Real Property and the addresses, if any, thereof, indicating for each parcel whether it is owned or leased, including in the case of leased Real Property, the landlord name, lease date and lease expiration date.

Section 3.21. Labor Matters. There are no strikes, lockouts or slowdowns against any Loan Party pending or, to the knowledge of the Borrower, threatened in writing, that, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect. All payments due from any Loan Party or for which any claim may be made against any Loan Party, on account of wages or employee health and welfare insurance or other benefits, have been paid or accrued as a liability on the books of such Loan Party except to the extent that the failure to do so has not had, and could not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect. The consummation of the Transactions will not give rise to any right of termination or right of renegotiation on the part of any union under any collective bargaining agreement to which any Loan Party is bound. Except as could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, the hours worked by and payments made to employees of any Loan Party have not been in violation of the Fair Labor Standards Act of 1938, as amended.

Section 3.22. Liens. There are no Liens of any nature whatsoever on any of the Property or assets of any Loan Party (other than Permitted Liens).

Section 3.23. Intellectual Property. Each of the Loan Parties, (a) owns or has the right to use all material Intellectual Property necessary to conduct its business, and (b) the use thereof by each Loan Party does not infringe upon the Intellectual Property rights of any other Person, in each case, except where the failure to own or have such rights or for any such infringements that, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect.

Section 3.24. Solvency. The Loan Parties (taken as a whole on a consolidated basis) are Solvent.

Section 3.25. Material Contracts. The documents listed on Schedule 3.25 constitute all of the Material Contracts in effect on the Closing Date. As of the Closing Date, none of such Material Contracts has been amended, supplemented or otherwise modified except as set forth on

Schedule 3.25, and all such Material Contracts are in full force and effect. As of the Closing Date, none of the Loan Parties, or, to the Borrower's knowledge, any other party to any such Material Contract, is in material default thereunder.

Section 3.26. Permits. Except with respect to any Permits the failure of which to be in effect could not reasonably be expected to have a Material Adverse Effect, (a) each Loan Party has obtained and holds all Permits required as of the date on which this representation and warranty is made in respect of (i) all Real Property and for any other property otherwise operated by or on behalf of, or for the benefit of, such Person, (ii) the construction, development, ownership and operation of the Project (in each case as contemplated under the Loan Documents, the Project Documents and the Plans and Specifications), and (iii) the operation of each of such Person's businesses, in each case, as presently conducted, (b) all such Permits are in full force and effect, and each Loan Party has performed and observed all requirements of such Permits, (c) no event has occurred that allows or results in, or after notice or lapse of time would allow or result in, revocation or termination by the issuer thereof or in any other impairment of the rights of the holder of any such Permit, (d) no such Permits contain any restrictions, either individually or in the aggregate, that are burdensome to any Loan Party, to the operation of any of its businesses as currently conducted (or currently proposed to be conducted), to the financing contemplated under the Loan Documents, or to the development, construction, ownership or operation of the Project (in each case, as contemplated under the Loan Documents, the Project Documents and the Plans and Specifications), or to the operation of any other property owned, leased or otherwise operated by such Person, (e) the Borrower has no knowledge that any Governmental Authority is considering limiting, suspending, revoking or renewing on burdensome terms any such Permit and (f) each Loan Party reasonably believes that each such Permit will be timely renewed and complied with, without unreasonable expense, and that any additional Permits that may be required of such Person will be timely obtained and complied with, without unreasonable expense.

Section 3.27. Senior Indebtedness. The Obligations (including the guarantee obligations of each Subsidiary Guarantor and the Borrower under the Loan Documents) constitute senior secured Indebtedness of each of the Loan Parties.

Section 3.28. Fiscal Year. The Fiscal Year of each of the Loan Parties (including the Borrower) ends on December 31 of each calendar year.

Section 3.29. Patriot Act. To the extent applicable, each Company and each Unrestricted Subsidiary is in compliance, in all material respects, with the (i) Trading with the Enemy Act, as amended, and each of the foreign assets control regulations of the United States Treasury Department (31 CFR, Subtitle B, Chapter V, as amended) and any other enabling legislation or executive order relating thereto, and (ii) Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act (USA Patriot Act of 2001) (the " Patriot Act"). No part of the proceeds of any Loan will be used, directly or indirectly, for any payments to any governmental official or employee, political party, official of a political party, candidate for political office, or anyone else acting in an official capacity, in order to obtain, retain or direct business or obtain any improper advantage, in violation of the United States Foreign Corrupt Practices Act of 1977, as amended.

Section 3.30. Anti-Terrorism Laws.

(a) All of the Loan Parties, Unrestricted Subsidiaries and, to the knowledge of the Loan Parties, all of their respective Affiliates, are in compliance, in all material respects, with all Anti-Terrorism Laws.

(b) None of the Loan Parties, Unrestricted Subsidiaries or, to the knowledge of the Loan Parties, any of their respective Affiliates or their respective agents acting or benefiting in any capacity in connection with the Loans, the Letters of Credit or the other transactions hereunder, is any of the following (each a "Blocked Person"):

(i) a Person that is listed in the annex to Executive Order No. 13224;

(ii) a Person 50% individually or in the aggregate owned by, or acting for or on behalf of, any Person that is listed in the annex to Executive Order No. 13224;

(iii) a Person with which any Agent or Lender is prohibited from dealing in any transaction by any Anti-Terrorism Law;

(iv) a Sanctioned Person; or

(v) a Person that is named as a "specially designated national" on the most current list published by the U.S. Treasury Department Office of Foreign Assets Control at its official website or any replacement website or other replacement official publication of such list.

(c) No Loan Party or Unrestricted Subsidiary conducts any business with (i) a Sanctioned Country or (ii) a Sanctioned Person.

Section 3.31. Anti-Corruption Laws and Sanctions.

(a) The Borrower has implemented and maintains in effect policies and procedures designed to ensure compliance in all material respects by the Borrower, its Subsidiaries, its Unrestricted Subsidiaries and (in their capacities as such) their respective directors, officers, employees and agents with Anti-Corruption Laws and Sanctions.

(b) The Borrower, its Subsidiaries, its Unrestricted Subsidiaries, or to the knowledge of the Borrower, their respective officers, directors, employees and agents when acting on behalf of the Borrower, its Subsidiaries or its Unrestricted Subsidiaries are in compliance with Anti-Corruption Laws and applicable Sanctions in all material respects.

(c) (i) No Loan Party and none of its directors or officers, and (ii) to the knowledge of any Loan Party, no employee or agent of such Loan Party that will act in any capacity in connection with the credit facility established hereby when acting or benefiting in connection with the Loans or the other transactions hereunder, is a Sanctioned Person.

Section 3.32. Regulation H. No Mortgage encumbers improved Real Property which is located in an area that has been identified by the Secretary of Housing and Urban Development as

an area having special flood hazards and in which flood insurance has been made available under the National Flood Insurance Act of 1968 (except any Mortgaged Properties as to which such flood insurance as required by Regulation H has been obtained and is in full force and effect as required by this Agreement).

ARTICLE IV.

CONDITIONS PRECEDENT

The obligations of the Lenders to make Loans are subject to the satisfaction (or waiver)(in the case of Section 4.01, by each Lender) of the following conditions:

Section 4.01 Closing Date. On the Closing Date:

(a) Legal Opinions. The Lead Arranger and the Administrative Agent, on behalf of itself and the Lenders, shall have received written opinions of (i) Paul, Weiss, Rifkind, Wharton & Garrison LLP, as special New York counsel for the Loan Parties and the Equity Pledgor, and (ii) Fox Rothschild LLP, as special New York counsel for the Loan Parties and the Equity Pledgor, each such opinion to be (A) dated the Closing Date, (B) addressed to the Administrative Agent, the other Agents and the Lenders, (C) covering such matters relating to the Loan Documents and the Transactions as the Lead Arranger and the Administrative Agent shall reasonably request and which are customary for transactions of the type contemplated herein and (D) otherwise in form and substance reasonably satisfactory to the Lead Arranger and the Administrative Agent.

(b) Companies' Documents. The Lead Arranger and the Administrative Agent shall have received (i) a copy of the certificate of formation or organization, articles of incorporation, certificate of limited partnership or other formation documents, including all amendments thereto, of each Company, certified as of a recent date by the Secretary of State of the state of its organization, and a certificate as to the good standing of each Company as of a recent date, from such Secretary of State; (ii) a certificate of the Secretary, Assistant Secretary, managing member or other Authorized Officer of each Company dated the Closing Date and certifying (A) that attached thereto is a true and complete copy of the limited liability company agreement, operating agreement, by-laws, limited partnership agreement or other such Governing Document of such Company as in effect on the Closing Date and at all times since a date prior to the date of the resolutions described in clause (B) below, (B) that attached thereto is a true and complete copy of resolutions duly adopted by the board of directors, board of managers, manager, general partner, managing member or similar governing body of such Company authorizing the execution, delivery and performance of the Loan Documents to which such Person is a party, and in the case of the Borrower, the borrowings hereunder, in the case of each Loan Party and the Equity Pledgor, the granting of the Liens contemplated to be granted by it under the Security Documents, in the case of each Subsidiary Guarantor and the Borrower, the Guaranteeing of the Obligations as contemplated by the Subsidiary Guaranty, and, in the case of each Company, the guarantees and other obligations set forth in the Loan Documents, and that

such resolutions have not been modified, rescinded or amended and are in full force and effect, (C) that the certificate of formation, articles or certificate of organization, articles of incorporation, certificate of limited partnership or other formation documents of such Company have not been amended since the date of the last amendment thereto shown on the certificate with respect thereto furnished pursuant to clause (i) above and (D) as to the incumbency and specimen signature of each officer or other authorized signatory executing any Loan Document or any other document delivered in connection herewith on behalf of such Company; (iii) in the case of each Company, a certificate of another officer as to the incumbency and specimen signature of the Secretary, Assistant Secretary, managing member or other Authorized Officer, as the case may be, executing the certificate pursuant to (ii) above; and (iv) such other documents related to the foregoing matters as the Administrative Agent, the Lead Arranger or any Lender may reasonably request.

(c) Officer's Certificate. The Administrative Agent shall have received the Closing Certificate, dated the Closing Date and signed by a Financial Officer or other authorized officer of the Borrower, confirming, among other things, compliance with the conditions precedent set forth in Section 4.02(b) and Section 4.02(c).

(d) Loan Documents. The Lead Arranger and the Administrative Agent shall have received each of the Loan Documents listed on Schedule 4.01(d)(i) and each of the Term Facility Documents listed on Schedule 4.01(d)(ii), in each case executed and delivered by a duly authorized officer of each party thereto, in form and substance reasonably satisfactory to the Lead Arranger and in full force and effect as of the Closing Date.

(e) Collateral. The Collateral Agent, for the ratable benefit of the Secured Parties, shall have been granted on the Closing Date first priority perfected Liens on the Collateral (subject, (v) in the case of Intellectual Property Collateral, if and to the extent perfection may be achieved in the United States by the filings required by the Loan Documents, (w) in the case of Mortgages and Assignments of Leases and Rents, to recordation after the Closing Date, (x) in the case of Pledged Collateral, to no Liens (other than Liens under the Term Facility Documents (subject to the Intercreditor Agreement)), and in the case of all Collateral other than Pledged Collateral, only to Permitted Liens and, in each case, prior and superior in right to the rights of any other Person (except with respect to Senior Permitted Liens), and (y) to the lack of perfection with respect to any such Collateral for which the Lien thereon is expressly not required to be perfected pursuant to such Loan Documents) and shall have received such other reports, documents and agreements as the Administrative Agent shall reasonably request and which are customarily delivered in connection with security interests in real property assets. The Pledged Collateral shall have been duly and validly pledged under the Pledge and Security Agreement and the Equity Pledge Agreement to the Collateral Agent, for the ratable benefit of the Secured Parties, and certificates representing such Pledged Collateral, if any, accompanied by instruments of transfer and stock powers endorsed in blank, shall be in the actual possession of the Collateral Agent or the Term Loan Collateral Agent, as applicable.

(f) UCC, Lien, Judgment and Bankruptcy Searches. The Administrative Agent shall have received the results of a recent lien, bankruptcy and judgment search in each relevant jurisdiction with respect to the Loan Parties and the Equity Pledgor and such search shall reveal no

Liens on any of the Pledged Collateral or other assets of the Loan Parties and the Equity Pledgor except, in the case of Collateral other than Pledged Collateral, for Permitted Liens and except for Liens to be discharged on or prior to the Closing Date pursuant to documentation reasonably satisfactory to the Administrative Agent.

(g) Indebtedness. After giving effect to the Transactions and the other transactions contemplated hereby, the Loan Parties shall have outstanding no Indebtedness or preferred stock other than the Loans and other extensions of credit hereunder, the Term Loans and other Indebtedness listed on Schedule 6.01.

(h) Intentionally Omitted.

(i) Projections. The Lead Arranger and the Administrative Agent shall have received projections of the Borrower and the Project for the period commencing on the Casino Opening Date through the latest Scheduled Maturity Date.

(j) Governmental Approvals. (i) The New York State Gaming Commission shall have issued its approval of the Transactions in form and substance reasonably satisfactory to the Administrative Agent and the Lead Arranger, and (ii) all other material governmental and third party approvals and all Permits necessary or advisable as of the Closing Date in connection with the Transactions, the Loan Parties and the development, construction and ownership of the Project (as contemplated under the Loan Documents, the Project Documents and the Plans and Specifications) shall have been obtained on terms reasonably satisfactory to the Administrative Agent and the Lenders and shall be in full force and effect. Other than as set forth on Schedule 3.09, there shall not exist any action, suit, investigation, litigation or proceeding pending or threatened in any court or before any arbitrator or Governmental Authority that has had, or could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

(k) Patriot Act. The Lead Arranger, the Administrative Agent and the Lenders shall have received, at least three (3) Business Days prior to the Closing Date (or such shorter time period as agreed to by the Lead Arranger and the Administrative Agent), all documentation and other information requested by them and required by regulatory authorities under applicable "know your customer" and anti-money laundering rules and regulations, including the Patriot Act.

(l) Title Insurance. The Lead Arranger, the Administrative Agent and the Collateral Agent shall have received in respect of each Mortgaged Property a mortgagee's title insurance policy (or policies) or marked up unconditional binder for such insurance or unconditional commitment to issue a title policy for such insurance. Each such policy shall (i) be in an amount satisfactory to the Lead Arranger and the Administrative Agent; (ii) insure that the Mortgage insured thereby creates a valid first Lien on, and security interest in, such Mortgaged Property free and clear of all defects and encumbrances, except as disclosed therein; (iii) name the Collateral Agent, for the benefit of the Secured Parties, as the insured thereunder; (iv) be in the form of ALTA Loan Policy acceptable to the Lead Arranger and the Administrative Agent; (v) not include the "standard" title exceptions, including any exceptions for mechanics' liens: (vi) contain such endorsements and affirmative coverage as the Lead Arranger or the Administrative Agent may reasonably request, each in form and substance reasonably acceptable to the Lead Arranger and the Administrative

Agent, and (vii) be issued by title companies reasonably satisfactory to the Lead Arranger and the Administrative Agent (including any such title companies acting as co-insurers or reinsurers, at the option of the Lead Arranger or the Administrative Agent), it being agreed that Stewart Title Insurance Company is acceptable to the Lead Arranger and the Administrative Agent (in each such case, a "Title Company"). The Lead Arranger, the Administrative Agent and the Collateral Agent shall have received evidence reasonably satisfactory to each of them that all premiums in respect of each such policy, any charges for mortgage recording tax, and all related expenses, if any, have been paid or will be paid on the Closing Date and that all mortgage tax and related affidavits, if any, have been delivered to the Title Company. The Lead Arranger, the Administrative Agent and the Collateral Agent shall have received a copy of all recorded documents referred to, or listed as exceptions to title in, the title policy or policies referred to above.

(m) Flood Insurance. The Lead Arranger, the Administrative Agent and the Collateral Agent shall have received (i) evidence as to whether (1) any Mortgaged Properties are located in an area designated by the Federal Emergency Management Agency as having special flood or mud slide hazards and (2) the communities in which any such Mortgaged Properties are located are participating in the National Flood Insurance Program, (ii) if there are any such Mortgaged Properties, the Borrower's written acknowledgement of receipt of written notification from the Administrative Agent (1) as to the existence of each such Mortgaged Property and (2) as to whether the communities in which such Mortgaged Properties are located are participating in the National Flood Insurance Program, and (iii) if any such Mortgaged Properties are located in communities that participate in the National Flood Insurance Program, evidence that the applicable Loan Party has obtained flood insurance in respect of such Mortgaged Properties to the extent required under the applicable regulations of the Board.

(n) Surveys. The Lead Arranger, the Administrative Agent and the Title Company shall have received maps or plans of an ALTA survey of each Mortgaged Property, which shall show, among other things, the location of all improvements on such Mortgaged Property, be certified to the Lead Arranger, the Administrative Agent, the Collateral Agent and the Title Company and dated, in each case in a manner reasonably satisfactory to them, by an independent professional licensed land surveyor reasonably satisfactory to the Lead Arranger, the Administrative Agent, the Collateral Agent and the Title Company.

(o) Landlord Estoppel Certificates and Subordination, Non-Disturbance and Attornment Agreements.

(i) The Lead Arranger, the Administrative Agent and the Collateral Agent shall have received estoppel certificates from the landlord with respect to each material leased Real Property that constitutes Mortgaged Property to the extent so requested, confirming the nonexistence of any default thereunder and certain other information with respect to such lease, each of the foregoing in form and substance reasonably satisfactory to the Lead Arranger, the Administrative Agent and the Collateral Agent. In the event the Administrative Agent or the Collateral Agent has determined that a recorded memorandum of lease or an amendment of lease is necessary or appropriate in order to make any such material leased Real Property mortgageable, or to grant the leasehold lender customary lender protections,

then the Administrative Agent and the Collateral Agent shall have received evidence of such recordation or a copy of such fully executed and binding lease amendment.

(ii) The Lead Arranger, the Administrative Agent and the Collateral Agent shall have received customary subordination, non-disturbance and attornment agreements from the tenants with respect to any material space leases at the Mortgaged Properties to the extent so requested (including statements confirming the nonexistence of any default under, and certain other information with respect to, such space leases), in each case in form and substance reasonably satisfactory to the Lead Arranger, the Administrative Agent and the Collateral Agent.

(p) Fees. The Lenders, the Agents and the Lead Arranger shall have received all Fees required to be paid, and all expenses required to be paid for which invoices have been presented, on or before the Closing Date.

(q) Litigation. There shall be no Proceedings (whether or not purportedly on behalf of any Company) at law or in equity, or before or by any federal, state, municipal or other governmental department, commission, board, bureau, agency or instrumentality, domestic or foreign (including any Environmental Claims) that are pending or, to the knowledge of the Borrower, threatened in writing against any Company or affecting any property of any Company, that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect.

(r) Insurance.

(i) The Loan Parties shall have (or shall cause to be maintained) insurance complying with the requirements of Section 5.05 in place and in full force and effect, and the Administrative Agent, the Collateral Agent and the Lead Arranger shall each have received (x) a certificate from the Borrower's insurance broker(s) reasonably satisfactory to them and the Insurance Advisor stating that such insurance is in place and in full force and effect and (y) copies of all policies evidencing such insurance (or a binder, commitment or certificates signed by the insurer or a broker authorized to bind the insurer, in which case copies of the applicable policies shall be delivered to the Administrative Agent within thirty (30) days after the Closing Date (or such later date as the Administrative Agent may agree)) naming the Administrative Agent, Collateral Agent and the Secured Parties as additional insureds and the Collateral Agent as loss payee (until such time as the Obligations have been paid in full), in accordance with the terms noted in Exhibit K, and otherwise in form and substance reasonably satisfactory to the Administrative Agent, the Collateral Agent, the Lead Arranger and the Insurance Advisor.

(ii) The Lead Arranger, the Administrative Agent and the Collateral Agent shall have each received, to the extent not delivered pursuant to clause (i) above, (A) a certificate of the Borrower's insurance broker(s) reasonably satisfactory to them identifying underwriters, type of insurance, insurance limits and policy terms of any insurance then required to be obtained under the Material Contracts then in effect as of the Closing Date and stating that such insurance is in full force and effect if the same is required to be in effect and that if then required to be in effect, all premiums then due thereon have been paid, and

that such insurance complies with the requirements of such Material Contracts, and (B) complete copies of all policies evidencing such insurance (or a binder, commitment or certificates signed by the insurer or a broker authorized to bind the insurer along with a commitment to deliver complete copies, in which case copies of the applicable policies shall be delivered to the Administrative Agent within thirty (30) days after the Closing Date) naming the Administrative Agent, the Collateral Agent and the Secured Parties as additional insureds and the Collateral Agent as loss payee, in accordance with the terms noted in Exhibit K, and otherwise in form and substance reasonably satisfactory to the Administrative Agent, the Collateral Agent and the Lead Arranger.

(iii) The Administrative Agent, the Lead Arranger and the Collateral Agent shall have received a report of the Insurance Advisor regarding insurance matters pertaining to the Loan Parties, the Project and under the Material Contracts in effect as of the Closing Date, in form, scope and substance reasonably satisfactory to them.

(s) Capitalization; Ownership Structure. The Lead Arranger and the Administrative Agent shall be reasonably satisfied with (i) the capital structure of the Companies and (ii) the terms and conditions of the Transactions. The Loan Parties shall have received the Closing Date Equity Contribution and shall have deposited it into the Company Funds Account (as defined in the Term Loan Agreement).

(t) Solvency Certificate. The Lead Arranger and the Administrative Agent shall have received a Solvency Certificate from the chief financial officer of the Borrower in form and substance reasonably satisfactory to the Lead Arranger and the Administrative Agent.

(u) Environmental Reports. The Lead Arranger and the Administrative Agent shall have received a copy of a report or copies of reports in form, scope and substance reasonably satisfactory to them regarding the environmental matters pertaining to each Mortgaged Property, including an identification of existing and potential environmental concerns, in each case together with a reliance letter in connection therewith (if such reports are not addressed to the Administration Agent) from an environmental consulting firm reasonably acceptable to the Lead Arranger, authorizing the Agents and the Secured Parties to rely on each such report.

(v) Intentionally Omitted.

(w) Intentionally Omitted.

(x) Intentionally Omitted.

(y) Consents and Material Contracts. The Administrative Agent and the Lead Arranger shall have received a fully executed and complete, conformed copy or photocopy of the IDA Documents, the Development Documents, and each other Material Contract executed or otherwise in effect on the Closing Date (each in form and substance reasonably acceptable to the Lead Arranger and the Administrative Agent), together, to the extent reasonably requested by the Administrative Agent, each Material Contract, with a fully executed and delivered consent to collateral assignment

and agreement from each counterparty thereto in form and substance reasonably satisfactory to the Lead Arranger and the Administrative Agent.

(z) Intentionally Omitted.

(aa) Intentionally Omitted.

(bb) Other Reports. The Administrative Agent and the Lead Arranger shall have received, in form and substance reasonably satisfactory to them, all material reports and audits not otherwise required to be delivered under this Section 4.01 which have been prepared by or for any Loan Party, or any Affiliate, advisor or consultant of any Loan Party, which pertain to the Project.

(cc) FIRREA Appraisal. The Lead Arranger and the Administrative Agent shall have received a FIRREA appraisal of certain Mortgaged Properties, on an as-is basis, and certain portions of the Project on an as-built and a stabilized basis, certified to the Lead Arranger, the Administrative Agent and the other Secured Parties and dated, all in form and substance reasonably satisfactory to the Lead Arranger and the Administrative Agent, by an independent real estate appraiser reasonably satisfactory to the Lead Arranger.

(dd) Representations and Warranties. Each representation and warranty set forth in each Loan Document shall be true and correct in all material respects on and as of the Closing Date, except to the extent such representations and warranties expressly relate to an earlier date, in which case such representations and warranties shall be true and correct in all material respects on and as of such earlier date; provided that, if a representation and warranty contains a materiality or Material Adverse Effect qualification, the materiality qualifier in this Section 4.01(dd) shall be disregarded for purposes of such representation and warranty. Intentionally Omitted.

(ee) Term Loan Agreement. The "Closing Date" under (and as defined in) the Term Loan Agreement shall have occurred (or shall occur concurrently with the Closing Date hereunder) and the Borrower shall have received gross cash proceeds of Term B Loans (as defined in the Term Loan Agreement) in an aggregate principal amount equal to $415,000,000.

Without limiting the generality of the provisions of Section 8.03(a), for purposes of determining compliance with the conditions specified in this Section 4.01, by signing this Agreement or a Lender Addendum each Lender has consented to, approved or accepted or indicated its satisfaction with, each document or other matter required hereunder to be consented to or approved by or acceptable or satisfactory to a Lender unless the Administrative Agent shall have received notice from such Lender prior to the proposed Closing Date specifying its objection thereto.

Section 4.02. All Credit Events. On the Closing Date (other than in respect of clause (a) below) and the date of each Borrowing (unless otherwise noted below), including, for the avoidance of doubt, each issuance, amendment, extension or renewal of a Letter of Credit (each such event being called a "Credit Event"):

(a) Notice. The Administrative Agent shall have received a notice of such Borrowing as required by Section 2.02(b) (or such notice shall have been deemed given in accordance herewith)

or, in the case of the issuance, amendment, extension or renewal of a Letter of Credit, the Issuing Bank and the Administrative Agent shall have received a notice requesting the issuance, amendment, extension or renewal of such Letter of Credit as required by Section 2.04(b).

(b) Representations and Warranties. Each representation and warranty made by a Loan Party set forth in each Loan Document shall be true and correct in all material respects on and as of the date of such Credit Event with the same effect as though made on and as of such date, except to the extent such representations and warranties expressly relate to an earlier date, in which case such representations and warranties shall be true and correct in all material respects on and as of such earlier date; provided that, if a representation and warranty contains a materiality or Material Adverse Effect qualification, the materiality qualifier in this Section 4.02(b) shall be disregarded for purposes of such representation and warranty.

(c) No Default. At the time of and immediately after such Credit Event, no Event of Default or Default shall have occurred and be continuing.

ARTICLE V.

AFFIRMATIVE COVENANTS

The Borrower covenants and agrees that, until payment in full of all Obligations, the Borrower shall perform, and shall cause each of the other Loan Parties to perform, all covenants in this Article V.

Section 5.01. Financial Statements and Other Reports. The Borrower will deliver to the Administrative Agent for distribution to the Lenders:

(a) Intentionally Omitted;

(b) Quarterly Financial Statements. Commencing with the Fiscal Quarter in which the Closing Date occurs, no later than sixty (60) (or in the case of the first Fiscal Quarter, seventy-five (75)) days after the end of each Fiscal Quarter (other than the fourth Fiscal Quarter), the consolidated balance sheets of the Borrower and its consolidated Subsidiaries as at the end of such Fiscal Quarter and the related consolidated statements of income, stockholders', members' or partners' equity and cash flows of the Borrower and its consolidated Subsidiaries for such Fiscal Quarter and for the period from the beginning of the then current Fiscal Year to the end of such Fiscal Quarter, setting forth in each case in comparative form the corresponding amounts for the corresponding periods of the previous Fiscal Year (to the extent applicable) and the corresponding amounts from the Financial Plan for the current Fiscal Year (to the extent applicable), all in reasonable detail, together with a Financial Officer Certification and, commencing with the Fiscal Quarter in which the Casino Opening Date occurs (and for each Fiscal Quarter thereafter (other than in respect of the last Fiscal Quarter of any Fiscal Year)), a Narrative Report with respect thereto;

(c) Annual Financial Statements. Commencing with the Fiscal Year in which the Closing Date occurs, as soon as available, and in any event no later than ninety (90) days after the end of each Fiscal Year, (i) the consolidated balance sheet of the Borrower and its consolidated Subsidiaries

as at the end of such Fiscal Year and the related consolidated statements of income, stockholders, members' or partners' equity and cash flows of the Borrower and its consolidated Subsidiaries for such Fiscal Year, setting forth in each case in comparative form the corresponding amounts for the previous Fiscal Year and the corresponding amounts from the Financial Plan for the Fiscal Year covered by such financial statements (to the extent applicable), in reasonable detail, together with a Financial Officer Certification and, commencing with the Fiscal Year in which the Casino Opening Date occurs (and for each Fiscal Year thereafter), a Narrative Report with respect thereto; and (ii) with respect to such consolidated financial statements a report thereon of Ernst & Young or other independent certified public accountant of recognized national standing selected by the Borrower and, if not one of the "Big-4" as of the date hereof, reasonably satisfactory to the Administrative Agent (which report shall not be subject to any "going concern" or like qualification or exception or any qualification or exception as to the scope of such audit, and shall state that such consolidated financial statements fairly present, in all material respects, the consolidated financial position of the Borrower and its consolidated Subsidiaries as of the dates indicated and the results of their operations and their cash flows for the periods indicated in conformity with GAAP applied on a consistent basis with prior years (except as otherwise disclosed in such financial statements) and that the audit by such accountants in connection with such consolidated financial statements has been made in accordance with generally accepted auditing standards), together with a written statement by such independent certified public accountants (to the extent that such accounting firm is willing to provide such statement in accordance with its customary business practice, it being understood that such statement in any event shall be limited to the items that independent certified public accountants are permitted to cover in such statements pursuant to their professional standards and customs of the profession) stating (1) that their audit has included a review of the accounting and financial matters contained in the related Compliance Certificate, and (2) that nothing has come to their attention that causes them to believe that the information contained in such Compliance Certificate related to accounting or financial matters is not correct or that such matters set forth in such Compliance Certificate are not stated in accordance with the terms hereof; provided that it shall not be a violation of preceding clause (ii) if the audit and opinion accompanying the financial statements for any Fiscal Year is subject to a "going concern" or like qualification solely as a result of the Scheduled Maturity Date for the Loans being scheduled to occur or a Scheduled Maturity Date (as defined in the Term Loan Agreement) for the respective Loans (as defined in the Term Loan Agreement) thereunder being scheduled to occur;

(d) Compliance Certificate. Together with each delivery of financial statements of the Borrower and its consolidated Subsidiaries pursuant to Sections 5.01(b) (other than the last Fiscal Quarter in any Fiscal Year) and 5.01(c), a duly executed and completed Compliance Certificate;

(e) Statements of Reconciliation after Change in Accounting Principles. If, as a result of any change in accounting principles and policies from those used in the preparation of any consolidated financial statements of the Borrower and its consolidated Subsidiaries previously delivered pursuant to Section 5.01(b) or 5.01(c), the consolidated financial statements of the Borrower and its consolidated Subsidiaries delivered pursuant to Section 5.01(b) or 5.01(c) will differ in any material respect from such previously delivered financial statements, then, together with the first delivery of such financial statements after such change, one or more statements of

reconciliation for all such prior financial statements in form and substance reasonably satisfactory to the Administrative Agent;

(f) Notice of Default. Promptly, and in any event within five (5) Business Days, upon any Responsible Officer of any Loan Party obtaining knowledge (i) of any condition or event that constitutes a Default or an Event of Default or that notice has been given to any Loan Party with respect thereto; (ii) that any Person has given any notice to any Loan Party or taken any other action with respect to any event or condition set forth in Section 7.01(h); or (iii) of the occurrence of any event or change that has caused or evidences, either in any case or in the aggregate, a Material Adverse Effect, a certificate of one or more of its Authorized Officers specifying the nature and period of existence of such condition, event or change, or specifying the notice given and action taken by any such Person and the nature of such claimed Event of Default, Default, event or condition, and what action the applicable Loan Party has taken, is taking and proposes to take with respect thereto;

(g) Notice of Litigation. Promptly upon any Responsible Officer of any Loan Party obtaining knowledge of (i) the institution of, or non-frivolous written threat of, any Proceeding against a Loan Party or the Equity Pledgor not previously disclosed in writing by the Borrower to the Administrative Agent, or (ii) any material development in any Proceeding against a Loan Party or the Equity Pledgor that, in the case of either preceding clause (i) or (ii) could be reasonably expected to have a Material Adverse Effect, or seeks to enjoin or otherwise prevent the consummation of, or to recover any damages or obtain relief as a result of, the financing transactions contemplated hereby, written notice thereof together with such other information as may be reasonably available to the Loan Parties to enable the Lenders and their counsel to evaluate such matters;

(h) ERISA. (i) Promptly upon any officer of any Loan Party becoming aware of the occurrence of or forthcoming occurrence of any ERISA Event, a written notice specifying the nature thereof, what action the applicable Loan Party or any of its ERISA Affiliate has taken, is taking or proposes to take with respect thereto and, when known, any action taken or threatened in writing by the IRS, the Department of Labor or the PBGC with respect thereto; (ii) with reasonable promptness, copies of (1) each Schedule B (Actuarial Information) to the annual report (Form 5500 Series) filed by any Loan Party or any ERISA Affiliate with the IRS with respect to each Benefit Plan after receipt by a Loan Party of a request for the same from the Administrative Agent or any Lender; (2) all written notices received by any Loan Party or any ERISA Affiliate from a Multiemployer Plan sponsor concerning an ERISA Event; and (3) such other documents or governmental reports or filings relating to any Benefit Plan as the Administrative Agent shall reasonably request; and (iii) as soon as practicable (A) the failure of any Loan Party or any ERISA Affiliate to make payment in all material amounts on or before the due date (including extensions) thereof of all amounts which such Loan Party or ERISA Affiliate is required to contribute to each Benefit Plan pursuant to its terms or, as required to meet the minimum funding standard set forth in ERISA and the Tax Code with respect thereto, except to the extent the failure to pay such amounts, individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect or (B) any change in the funding status of any Benefit Plan that, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect, a written description of any such

event or condition or a copy of any such notice and a statement briefly setting forth the details regarding such event, condition or notice, and the action, if any, which has been taken, is being taken or is proposed to be taken by such Loan Party or such ERISA Affiliate;

(i) Financial Plan. No later than ten (10) days prior to the Casino Opening Date and sixty (60) days after the beginning of each Fiscal Year thereafter, a consolidated plan and financial forecast for such Fiscal Year (or, in the case of the Financial Plan delivered prior to the Casino Opening Date, the Fiscal Year in which the Casino Opening Date occurs) and each Fiscal Year (or portion thereof) through the latest Scheduled Maturity Date (a "Financial Plan"), including (i) a forecasted consolidated balance sheet and forecasted consolidated statements of income and cash flows of the Borrower and its consolidated Subsidiaries for each such Fiscal Year and (ii) forecasted consolidated statements of income and cash flows of the Borrower and its consolidated Subsidiaries for each Fiscal Quarter of the first Fiscal Year addressed in such Financial Plan;

(j) Insurance Report. Each year, at the time of delivery of annual financial statements with respect to the preceding Fiscal Year pursuant to Section 5.01(c), a report in form and substance reasonably satisfactory to the Administrative Agent and the Insurance Advisor outlining all material insurance coverage maintained as of the date of such report by the Loan Parties and all material insurance coverage planned to be maintained by the Loan Parties in the immediately succeeding Fiscal Year or a certificate from an Authorized Officer of the Borrower confirming that there has been no material change in such insurance coverage or noting any such material changes;

(k) Notice Regarding Material Contracts. Promptly after (i) any Gaming License is terminated or amended in any material respect or any other Material Contract is terminated or amended in any material respect, (ii) any material breach or default has occurred, or to the knowledge of the Borrower, been threatened in writing with respect to any Material Contract, or (iii) any Material Contract is entered into, a written statement describing such event, with copies of such amendments or new contracts;

(l) Environmental Reports and Audits. Promptly following receipt thereof by any Loan Party, copies of all environmental audits, investigations, analyses and reports of any kind or character, whether prepared by personnel of a Loan Party or by independent consultants, governmental authorities or any other Persons, with respect to material environmental matters at any of the Loan Parties' Properties or with respect to any material Environmental Claims against any of the Loan Parties or material Environmental Liabilities;

(m) Information Regarding Collateral. Promptly after such change, written notice of any change (i) in the legal name of any Loan Party or the Equity Pledgor, (ii) in the identity or capital structure of any Loan Party or the Equity Pledgor or (iii) in the Federal Taxpayer Identification Number of any Loan Party or the Equity Pledgor. The Borrower shall not effect or permit (and shall cause the other Loan Parties and the Equity Pledgor not to effect or permit) any change referred to in the preceding sentence unless all filings have been made under the UCC or otherwise that are required in order for the Collateral Agent to continue at all times following such change to have a valid, legal and perfected security interest in all the Collateral as contemplated in the Security Documents. The Borrower shall promptly notify the Administrative Agent upon becoming aware of any material portion of the Collateral being damaged or destroyed;

(n) Annual Collateral Verification. Each year, at the time of delivery of annual financial statements with respect to the preceding Fiscal Year pursuant to Section 5.01(c), a certificate from an Authorized Officer of the Borrower certifying that all UCC financing statements (including fixtures filings, as applicable) or other appropriate filings, recordings or registrations, have been filed of record in each governmental, municipal or other appropriate office in each jurisdiction to the extent necessary to perfect the security interests under the Security Documents for a period of not less than eighteen (18) months after the date of such certificate (except as noted therein with respect to any continuation statements to be filed within such period);

(o) Gaming Authority Communication. Promptly after receipt by any officer of any Loan Party of written notice from any Gaming Authority that such Gaming Authority is considering revoking, suspending or modifying any Gaming License (in whole or in part) in any materially adverse manner;

(p) Hotel and Gaming Information. Together with each delivery of financial statements of the Borrower and its consolidated Subsidiaries pursuant to Section 5.01(b) and Section 5.01(c) after the Casino Opening Date, a summary describing (x) the average daily rates for the hotel located at the Project and (y) wins per unit for slots and tables at the casino located at the Project, in each case, for the preceding month, Fiscal Quarter or Fiscal Year, as the case may be; and

(q) Other Information. To the extent not prohibited by applicable law or regulation, and subject to confidentiality requirements granted by the applicable Governmental Authority, (i) promptly upon their becoming available, copies of all regular and periodic reports and other material reports and notices, if any, filed by any Loan Party with any governmental or private regulatory authority (including Gaming Authorities), and all press releases and other statements made available generally by any Loan Party or Empire to the public (other than advertising and promotional statements or releases made in the ordinary course of such Loan Party's business) concerning material adverse developments in the business of such Loan Party, and (ii) with reasonable promptness, such other information and data with respect to any Loan Party (including the information referred to in Section 9.22) as from time to time may be reasonably requested by the Administrative Agent.

Section 5.02. Existence. Except as otherwise permitted under Section 6.09, the Borrower will, and will cause each other Loan Party to, at all times preserve and keep in full force and effect its existence; provided that, no Loan Party (other than the Borrower with respect to existence) shall be required to preserve any such existence if such Person's board of directors, board of managers, managing member(s), general partner, manager or similar governing body shall determine that the preservation thereof is no longer desirable in the conduct of the business of such Person, and that the loss thereof is not disadvantageous in any material respect to such Person or to the Secured Parties.

Section 5.03. Payment of Taxes and Claims. The Borrower will, and will cause the Equity Pledgor and each of the Equity Pledgor's Subsidiaries to (a) timely file all Federal and state income tax returns and other tax returns and materials required to be filed by them and (b) pay and discharge prior to the date on which penalties attach thereto (i) all Federal, state and other Taxes imposed upon them or any of their properties or assets or in respect of any of their income, businesses or

franchises which, in each case, could be a liability of or be imposed on the Borrower or any of its Subsidiaries and (ii) all claims (including claims for labor, services, materials and supplies) for sums that have become due and payable and that by law have or may become a Lien upon any of their properties or assets which, in each case, could be a liability of or be imposed on the Borrower or any of its Subsidiaries; provided, no such Tax, claim or obligation need be paid if (A) it could not reasonably be expected to result in a Material Adverse Effect or (B) is being contested in good faith by appropriate proceedings promptly instituted and diligently conducted, so long as in the case of (B), (x) adequate reserves or other appropriate provisions, as shall be required in conformity with GAAP, shall have been made therefor, and (y) such contest operates to suspend collection of the contested Tax, claim or obligation (including the sale of any portion of the Collateral to satisfy such Tax, claim or obligation) and enforcement of any Lien against any of the Collateral.

Section 5.04. Maintenance of Properties. The Borrower will, and will cause each other Loan Party to, maintain or cause to be maintained in good repair, working order and condition, ordinary wear and tear and condemnation excepted, all material properties used or useful at the Project or otherwise in the business of the other Loan Parties and from time to time will make or cause to be made all appropriate repairs, renewals and replacements thereof except to the extent that Borrower determines in good faith not to maintain, repair, renew or replace such property if such property is no longer desirable in the conduct of their business and the failure to do so is not disadvantageous in any material respect to any Loan Party or the Lenders.

Section 5.05. Insurance. At all times, the Borrower will maintain or cause to be maintained by such other applicable Loan Party, with financially sound and reputable insurers, the insurance specified in Exhibit K and such other public liability insurance, third party property damage insurance, business interruption insurance and property or casualty insurance with respect to liabilities, losses or damage in respect of the assets, properties and businesses at the Project or otherwise of the Loan Parties as may customarily be carried or maintained under similar circumstances by Persons of established reputation engaged in similar businesses, in each case in such amounts (giving effect to self-insurance), with such deductibles, covering such risks, in such amounts and otherwise on such terms and conditions as specified on Exhibit K and, if not so specified, shall be customary for such Persons. Without limiting the generality of the foregoing, the Borrower will maintain or cause to be maintained by such other applicable Loan Party (a) flood insurance in compliance with any applicable regulations of the Board, and (b) replacement value property insurance on the Collateral of the Loan Parties under such policies of insurance, with such insurance companies, in such amounts, with such deductibles, and covering such risks as specified on Exhibit K and, if not so specified, are customarily carried or maintained under similar circumstances by Persons of established reputation engaged in similar businesses of similar size. Each such policy of insurance shall (i) name the Administrative Agent and the Secured Parties as additional insureds thereunder (as applicable) as their interests may appear, (ii) in the case of each property related insurance policy, contain a mortgagee and/or lender loss payable clause or endorsement, reasonably satisfactory in form and substance to the Administrative Agent, that names the Collateral Agent as the loss payee thereunder and (iii) provide that the insurer will provide at least thirty (30) days' prior written notice to the Administrative Agent and Collateral Agent of any modification or cancellation of such policy (or at least ten (10) days' prior written notice to the Administrative Agent and Collateral Agent of any cancellation for non-payment of premium); provided that this clause

(iii) shall not be required to be satisfied if the provider of such insurance policy is unwilling to provide such notice notwithstanding the Borrower's use of commercially reasonable efforts to obtain the same. In the event that the Borrower or any other Loan Party shall undertake to repair, restore, replace or otherwise remedy any damage, destruction, taking or breach of an obligation under a Project Document corresponding to a Recovery Event pursuant to the definition of "Net Cash Proceeds" with Restoration Proceeds, the Borrower shall, and shall cause the other Loan Parties to, in the case of Restoration Proceeds received prior to the Completion Date with respect to the Project, deposit such Restoration Proceeds into the Company Funds Accounts for application in accordance with this Agreement and the Disbursement Agreements. To the extent the Administrative Agent or the Collateral Agent receives any proceeds of any property or casualty insurance policy maintained by a Loan Party hereunder, so long as no Event of Default has occurred and is continuing, the Administrative Agent or the Collateral Agent, as applicable, shall promptly deliver such proceeds to the Borrower or the other applicable Loan Parties (unless otherwise required to be applied to the Loans pursuant to Section 2.13 or the comparable section of the Term Loan Agreement) to be utilized by such Loan Parties as otherwise permitted by the Loan Documents. In the event of any direct conflict between the terms of Exhibit K and this Section 5.05, the terms of Exhibit K shall control. Notwithstanding anything to the contrary contained herein, in the event that the Borrower or any other Loan Party fails to provide the Administrative Agent with evidence reasonably satisfactory to the Administrative Agent of the insurance coverage required by this Agreement, the Administrative Agent may purchase insurance at the Borrower's expense to protect the Administrative Agent's and the Secured Parties' interest in the Mortgaged Properties and other Collateral. Such insurance may, but need not, protect the Borrower's interest in the Mortgaged Properties or the other Collateral. The coverages that the Administrative Agent purchases may not pay any claim that the Borrower or any other Loan Party makes or any claim that is made against the Borrower or any other Loan Party in connection with the Mortgaged Properties or the other Collateral. The Borrower or any other Loan Party may later cancel any insurance purchased by the Administrative Agent, but only after providing the Administrative Agent with evidence reasonably satisfactory to the Administrative Agent that the Borrower or the other Loan Party has obtained the insurance required by this Agreement. If the Administrative Agent purchases insurance for the Mortgaged Properties and/or the other Collateral, the Borrower will be responsible for the costs of that insurance, including interest at the interest rate described in Section 2.09 for ABR Loans and any other charges imposed by the Administrative Agent in connection with the placement of insurance, until the effective date of the cancellation or expiration of such insurance. The costs of the insurance may, at the Administrative Agent's discretion, be added to the Borrower's total principal obligations owing to the Administrative Agent and the Secured Parties, and in any event shall be secured by the Liens on the Mortgaged Properties and the other Collateral created by the Loan Documents. It is understood and agreed that the costs of insurance obtained by the Administrative Agent may be more than the costs of insurance that the Borrower may be able to obtain on its own.

Section 5.06. **Maintaining Records**. The Borrower will, and will cause each other Loan Party to, keep proper books of record and account in which full, true and correct entries (in all material respects) in conformity with GAAP, to the extent required by GAAP, and all Legal Requirements (in all material respects) are made of all dealings and transactions in relation to its business and activities.

Section 5.07. Inspections. Subject to any applicable Gaming Laws restricting such actions, the Borrower will, and will cause each other Loan Party to, permit any authorized representatives designated by any Agent or any Lender to visit and inspect the Project or any other properties of the Loan Parties (in a manner intended not to disrupt normal business operations), to inspect, copy and take extracts from its and their financial and accounting records (to be used subject to customary confidentiality restrictions and to the extent permitted by law), and to discuss its and their affairs, finances and accounts with its and their officers and independent public accountants if requested by the Administrative Agent (provided that any designated representatives of the Borrower, if they so choose, shall be present at or participate in such discussions), all upon reasonable advance notice and at such reasonable times during normal business hours; provided that, notwithstanding anything to the contrary in any other Loan Document, unless an Event of Default shall have occurred and be continuing, the Borrower shall be responsible for the costs of only one such inspection in any Fiscal Year; provided further that only the Administrative Agent or another designated representative or consultant on behalf of the Lenders may inspect the Project or any other properties of the Loan Parties pursuant to the foregoing.

Section 5.08. Lenders Meetings.

The Borrower will, upon the request of the Administrative Agent or the Required Lenders, (x) participate in a conference call with the Administrative Agent and the Lenders once during each Fiscal Quarter and (y) in lieu of a conference call with the Administrative Agent and the Lenders in respect of the fourth Fiscal Quarter as provided in preceding clause (x), participate in a meeting with the Administrative Agent and the Lenders in respect of the fourth Fiscal Quarter, to be held at the Borrower's corporate offices (or at such other location as may be agreed to by the Borrower and the Administrative Agent) at such time as may be agreed to by the Borrower and the Administrative Agent; provided that, notwithstanding anything to the contrary in any Loan Document, the Borrower shall not be responsible for the costs of Lenders attending such meetings.

Section 5.09. Compliance with Laws, Material Contracts and Permits.

(a) The Borrower will comply, and will cause each other Loan Party and Unrestricted Subsidiary to comply, with the requirements of all applicable laws, rules, regulations and orders of any Governmental Authority (including all Environmental Laws and any laws related to campaign finance or political contributions), except to the extent noncompliance therewith could not reasonably be expected to (i) have, individually or in the aggregate, a Material Adverse Effect or (ii) cause a License Revocation; provided, however, that this Section 5.09(a) shall not apply to laws related to Taxes, which are the subject of Section 5.03.

(b) The Borrower will, and will cause each other Loan Party to, comply, duly and promptly, with its respective obligations and enforce all of its respective rights under all Material Contracts, except where the failure to so comply or enforce could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(c) The Borrower will, and will cause each other Loan Party to, from time to time obtain, maintain, retain, observe, keep in full force and effect and diligently comply with the terms, conditions and provisions of all Permits as shall now or hereafter be necessary under applicable

laws, except, with respect to any such Permit, to the extent the noncompliance therewith could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(d) The Borrower will, and will cause each other Loan Party to, comply, duly and promptly, in all material respects with its respective obligations and enforce all of its respective rights under each ground lease under which the Borrower or any other Loan Party is the tenant and that is material to the Project, except where the failure to so comply or enforce could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

Section 5.10. Environmental.

(a) Environmental Disclosure. The Borrower will deliver to the Administrative Agent for distribution to the Lenders:

(i) promptly upon, and in any event within five (5) Business Days after knowledge thereof by any Loan Party, written notice describing in reasonable detail (1) any Release required to be reported to any federal, state or local governmental or regulatory agency under any applicable Environmental Laws and that, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect, or (2) any remedial action taken by any Loan Party or any other Person in response to (A) any Hazardous Materials Activities the existence of which could reasonably be expected to result in one or more Environmental Claims having, individually or in the aggregate, a Material Adverse Effect, or (B) any Environmental Claims that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect;

(ii) as soon as practicable, and in any event within five (5) Business Days, following the sending or receipt thereof by any Loan Party, a copy of any written communications with respect to (1) any Environmental Claims or Environmental Liabilities that, individually or in the aggregate, could reasonably be expected to give rise to a Material Adverse Effect, (2) any Release required to be reported to any federal, state or local governmental or regulatory agency that, individually or in the aggregate, could reasonably be expected to give rise to a Material Adverse Effect, (3) any request for information from any Governmental Authority that suggests such agency is investigating whether any Loan Party may be potentially responsible for any Hazardous Materials Activity that, individually or in the aggregate, could reasonably be expected to give rise to a Material Adverse Effect and (4) any written request for information from any Governmental Authority that suggests such Governmental Authority is investigating whether any Loan Party may be potentially responsible for any Release of Hazardous Materials that, individually or in the aggregate, could reasonably be expected to give rise to a Material Adverse Effect;

(iii) promptly upon, and in any event within five (5) Business Days of, the availability thereof, written notice describing in reasonable detail (1) any proposed acquisition of stock, assets, or property by any Loan Party that could reasonably be expected to (A) expose such Loan Party to, or result in, Environmental Claims or Environmental Liabilities that could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect or (B) affect the ability of any Loan Party to maintain in full force

and effect all material Permits required under any applicable Environmental Laws for their respective operations and (2) any proposed action to be taken by any Loan Party to modify current operations in a manner that could reasonably be expected to subject such Loan Party to any additional material obligations or requirements under any Environmental Laws;

(iv) with reasonable promptness, such other documents and information as from time to time may be reasonably requested by the Administrative Agent in relation to any matters disclosed pursuant to this Section 5.10(a).

(b) Hazardous Materials Activities, Etc. The Borrower shall promptly take, and shall cause each other Loan Party promptly to take, any and all actions necessary to (i) cure any violation of applicable Environmental Laws by any Loan Party that could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect, and (ii) make an appropriate response to any Environmental Claim against any Loan Party and discharge any obligations such Loan Party may have to any Person thereunder where failure to do so could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

Section 5.11. Subsidiaries; Guarantors. In the event that any Person becomes a Subsidiary of the Borrower, such Subsidiary shall be a wholly owned Subsidiary of the Borrower and the Borrower shall (a) promptly (x) if such Subsidiary is the first Subsidiary of the Borrower, cause such Subsidiary to execute and deliver to the Administrative Agent the Subsidiary Guaranty and the Subordinated Intercompany Note, and (y) for each other Subsidiary, cause such Subsidiary to become a Subsidiary Guarantor under the Subsidiary Guaranty by executing and delivering to the Administrative Agent an executed counterpart to the Subordinated Intercompany Note and the Subsidiary Guaranty as provided for therein, (b) promptly cause such Subsidiary to become a "Grantor" under and as defined in the Pledge and Security Agreement by executing and delivering to the Administrative Agent and the Collateral Agent a joinder agreement in the form attached to the Pledge and Security Agreement and (c) within ten (10) Business Days (or such longer period as may be agreed to by the Administrative Agent and the Collateral Agent) take all such actions and execute and deliver, or cause to be executed and delivered, to the extent applicable, all such documents, instruments, agreements, and certificates as are similar to those described in Section 4.01(a), Section 4.01(b), Section 4.01(d), Section 4.01(e), Section 4.01(f), Section 4.01(k), Section 4.01(l), Section 4.01(m), Section 4.01(n), Section 4.01(o), Section 4.01(u) and Section 4.01(bb). With respect to each such Subsidiary, the Borrower shall promptly send to the Administrative Agent written notice setting forth with respect to such Person (i) the date on which such Person became a Subsidiary of the Borrower, and (ii) all of the data required to be set forth in Schedule 3.08 with respect to all Subsidiaries of the Borrower; provided, such written notice shall be deemed to supplement Schedule 3.08 for all purposes hereof.

Section 5.12. Additional Material Real Estate Assets. In the event that any Loan Party acquires any Real Property (including fee or leasehold interests but other than Excluded Leased Real Property) and such interest has not otherwise been made subject to the Lien of the Security Documents in favor of the Collateral Agent, for the benefit of Secured Parties, then the Borrower shall, or shall cause such other Loan Party to, within forty-five (45) Business Days (or such longer period as may be agreed to by the Administrative Agent) after acquiring such Real Property, take

all such actions and execute and deliver, or cause to be executed and delivered, all such mortgages, assignments of leases and rents, title insurance policies, flood insurance, surveys, landlord estoppel certificates, legal opinions, subordination, non-disturbance and attornment agreements and other instruments and agreements similar to those required on the Closing Date under Section 4.01(d), Section 4.01(e), Section 4.01(l), Section 4.01(m), Section 4.01(n), Section 4.01(o) and Section 4.01(bb) with respect to each such Real Property that the Administrative Agent shall reasonably request to create in favor of the Collateral Agent, for the benefit of Secured Parties, a valid and, subject to any filing and/or recording referred to herein, perfected first priority security interest in such Real Property (subject to Senior Permitted Liens). In addition to the foregoing, the Borrower shall, or shall cause such other Loan Party to, at the request of the Required Lenders, deliver, from time to time, to the Administrative Agent and the Collateral Agent such appraisals as are required by law or regulation of Real Property with respect to which the Collateral Agent has been granted a Lien. Notwithstanding anything to the contrary in this Section 5.12, the Loan Parties shall not be required to (a) take the actions necessary to grant a perfected security interest in, or (b) obtain title insurance policies with respect to, the Excluded Leased Real Property or any Property acquired after the Closing Date to the extent that the Administrative Agent has determined in its sole discretion that the collateral value thereof is insufficient to justify the difficulty, time and/or expense of taking such actions or obtaining such policies. Additionally, following the acquisition of any Real Property by a Loan Party, the definitions, exhibits and schedules to this Agreement and any other Loan Document (including the Disbursement Agreements) related to descriptions of Real Property shall be deemed amended to the extent necessary to reflect such acquisition. Notwithstanding anything to the contrary in this Section 5.12, in the event Empire Sub II enters into an IDA Lease Agreement or an IDA Leaseback Agreement with the IDA with respect to the Entertainment Village, the Borrower shall promptly cause Empire Sub II and shall use commercially reasonable efforts to cause the IDA to enter into one or more Mortgages, substantially in the form of Exhibit C-5, with respect thereto but shall not otherwise be required to take any other action, execute or deliver (or cause to be executed or delivered) any other instrument or agreement or take or cause to be taken any other action pursuant to this Section 5.12 unless reasonably requested by the Administrative Agent (provided in no event shall the Borrower be required to purchase title insurance policies, obtain estoppel certificates or provide updated surveys with respect thereto).

Section 5.13. Intentionally Omitted.

Section 5.14. Further Assurances. At any time or from time to time upon the written request of the Administrative Agent, the Borrower will, and will cause the other Loan Parties to, at its and their expense, promptly execute, acknowledge and deliver such further documents and do such other acts and things as the Administrative Agent may reasonably request in order to effect fully the purposes of the Loan Documents. In furtherance and not in limitation of the foregoing, the Borrower shall take, and shall cause the other Loan Parties to take, such actions as the Administrative Agent may reasonably request from time to time to ensure that the Obligations are guaranteed by the Subsidiary Guarantors and the Borrower and are secured by the Collateral (subject in each case to limitations contained in the Loan Documents with respect to (i) Excluded Collateral and (ii) any Collateral on which perfection action is not required to be taken by the Loan Documents).

Section 5.15. Proceeds and Revenues.

(a) The Borrower shall, and shall cause each other Loan Party to, use the proceeds of the Loans and request the issuance of Letters of Credit only for the purposes specified in Section 3.13.

(b) Subject to the terms of the Disbursement Agreements the Borrower shall, and shall cause each of the other Loan Parties to, deposit in an Investment Account and, until utilized or disbursed in accordance with the Loan Documents or the Disbursement Agreements, maintain on deposit in an Investment Account, all Cash and Cash Equivalents other than (i) On-Site Cash, (ii) Cash and Cash Equivalents required pursuant to Gaming Laws or by Gaming Authorities to be deposited into Gaming Reserves, (iii) Cash and Cash Equivalents held, pursuant to ordinary course operations, in payroll accounts of Persons providing the Loan Parties payroll services, (iv) Cash and Cash Equivalents on temporary deposit with, or held temporarily in escrow or trust by, other Persons pursuant to customary arrangements related to transactions otherwise permitted under the Loan Documents and solely containing funds for such purposes, (v) Cash and Cash Equivalents that in the ordinary course of business are not maintained on deposit in a bank or other deposit or investment account pending application toward working capital or other general corporate purposes of the Loan Parties, (vi) Cash and Cash Equivalents on deposit in 401(k), trust accounts (for the benefit of third parties) and pension accounts established in the ordinary course of business and solely containing funds for such purposes, (vii) Cash and Cash Equivalents on deposit in Excluded Accounts or otherwise constituting Excluded Collateral, (viii) Cash and Cash Equivalents provided as security to bonding companies, letter of credit providers, Governmental Authorities, service providers or hedge counterparties pursuant to Section 6.02(d), Section 6.02(s), Section 6.02(u), Section 6.02(v) or Section 6.02(bb) and (ix) proceeds of any FF&E Agreement (as defined in the Term Loan Agreement) or Specified FF&E Collateral (as defined in the Term Loan Agreement).

Section 5.16. Post-Closing Matters. Notwithstanding anything to the contrary set forth in this Agreement, the Borrower agrees that the Borrower shall, or shall cause the other Loan Parties to, deliver to the Administrative Agent on behalf of the Lenders, the documents set forth on Schedule 5.16, in form and substance reasonably satisfactory to the Administrative Agent, and/or take the actions set forth on Schedule 5.16, in a manner reasonably acceptable to the Administrative Agent, on or before the deadlines set forth in Schedule 5.16 (as such deadlines may be extended by Administrative Agent in writing in its reasonable discretion). To the extent there is any conflict between the provisions of any Loan Document and Schedule 5.16, the provisions of Schedule 5.16 shall control.

Section 5.17. Intentionally Omitted.

Section 5.18. Maintenance of Corporate Separateness. Neither the Borrower nor any of its Subsidiaries shall (i) make any payment to a creditor of any Unrestricted Subsidiary in respect of any liability of any Unrestricted Subsidiary (except to the extent of Investments permitted pursuant to Section 6.07(l), (m), (n) or (q)), and no bank account or similar account of any Unrestricted Subsidiary shall be commingled with any bank account or similar account of the Borrower or any of its Subsidiaries or (ii) take any action, or conduct its affairs in a manner, which is likely to result in the corporate existence of the Borrower or any of its Subsidiaries or Unrestricted Subsidiaries (to the extent then in existence) being ignored, or in the assets and liabilities of the Borrower or any

of its Subsidiaries being substantively consolidated with those of any Unrestricted Subsidiary in a bankruptcy, reorganization or other insolvency proceeding.

ARTICLE VI.

NEGATIVE COVENANTS

The Borrower covenants and agrees that until payment in full of all Obligations the Borrower shall perform, and shall cause each of the other Loan Parties to perform, all covenants in this Article VI.

Section 6.01. Indebtedness. The Borrower shall not, and it shall not permit any other Loan Party to, directly or indirectly, create, incur, assume, issue or guaranty, or otherwise become or remain directly or indirectly liable with respect to, any Indebtedness except:

(a) the Obligations;

(b) Indebtedness of any Loan Party to any other Loan Party; provided, that (i) all such Indebtedness shall be unsecured and evidenced by, and subject to the terms and conditions of, the Subordinated Intercompany Note, which note shall be subject to a Lien pursuant to the Pledge and Security Agreement and (ii) any payment by any such Loan Party under any Guarantee of the Obligations shall result in a *pro tanto* reduction of the amount of any Indebtedness owed by such Loan Party to such other Loan Party for whose benefit such payment is made;

(c) Indebtedness of any Loan Party in respect of a deposit, surety or other bond or other similar instrument required to be provided to the Gaming Authorities in accordance with subdivision 1 of Section 1315 of the Racing, Pari-Mutuel Wagering and Breeding Law and 9 NYCRR Section 5301.9(a) in an aggregate principal amount not to exceed $65,142,586 less any amounts that have been reimbursed, drawn or returned thereunder;

(d) Indebtedness incurred by a Loan Party arising from agreements providing for indemnification, adjustment of purchase price or similar obligations in connection with permitted acquisitions or dispositions of any business or assets of such Loan Party;

(e) Indebtedness which may be deemed to exist pursuant to any performance, surety, statutory, appeal or similar obligations incurred in the ordinary course of business;

(f) Guarantees in the ordinary course of business of the obligations of suppliers, customers, franchisees and licensees of the Loan Parties not to exceed $2,500,000 in the aggregate at any time;

(g) Indebtedness in respect of netting services, cash management services, overdraft protections and otherwise in connection with deposit accounts or securities accounts, in each case, to the extent related to ordinary course business operations;

(h) Guarantees by a Loan Party of Indebtedness or other obligations of another Loan Party with respect to Indebtedness otherwise permitted to be incurred pursuant to this Section 6.01;

(i) Indebtedness existing on the date of this Agreement and set forth in Schedule 6.01, but not any extensions, renewals or replacements of such Indebtedness except (i) renewals and extensions provided for in the agreements evidencing any such Indebtedness as the same are in effect on the date of this Agreement and (ii) refinancings and extensions of any such Indebtedness to the extent that the same constitutes Permitted Refinancing Indebtedness;

(j) Capital Lease Obligations and purchase money Indebtedness (including pursuant to the FF&E Agreements (as defined in the Term Loan Agreement)) in a combined aggregate amount not to exceed at any time outstanding $40,000,000; provided, that with respect to purchase money Indebtedness, such Indebtedness (i) shall at the time of incurrence constitute not less than 70% and not more than 100% (plus the aggregate amount of any fees, costs and expenses paid to the lender providing such Indebtedness) of the aggregate consideration paid with respect to such assets and (ii) shall (except with respect to refinancings of Indebtedness otherwise permitted pursuant to this clause (j)) be incurred prior to or within 180 days after the acquisition of such assets;

(k) Indebtedness related to Hedging Agreements not prohibited by Section 6.17;

(l) Subordinated Indebtedness of the Borrower (it being acknowledged that the Completion Guarantor (as defined in the Term Loan Agreement) may fund its obligations under the Completion Guaranty (as defined in the Term Loan Agreement) in the form of Subordinated Indebtedness); provided that, the Net Cash Proceeds of such Subordinated Indebtedness (other than Subordinated Indebtedness provided by the Sponsors the proceeds of which are utilized solely for Specified Equity Contributions, payments required by the Completion Guaranty (as defined in the Term Loan Agreement), payments made in accordance with either Disbursement Agreement, payments of Project Costs or Consolidated Capital Expenditures made in accordance with Section 6.08(c)) shall be applied within one (1) Business Day of the receipt of such proceeds in accordance with Section 2.14(b);

(m) Indebtedness in respect of bid, performance or surety bonds, letters of credit in order to provide security for workers' compensation claims, self-insurance obligations, bonds securing the performance of judgments or a stay of process in proceedings to enforce a contested liability or in connection with any order or decree in any legal proceeding and bank overdrafts issued for the account of any Loan Party, in each case incurred in the ordinary course of business; provided that any obligations arising in connection with such bank overdraft Indebtedness is extinguished within five (5) Business Days;

(n) Indebtedness consisting of the financing of insurance premiums so long as the aggregate amount of such Indebtedness is not in excess of the amount of the unpaid cost of such insurance;

(o) other Indebtedness of the Loan Parties in an aggregate outstanding principal amount not to exceed at any time outstanding $10,000,000;

(p) Indebtedness of the Loan Parties under the Term Facility Documents and any Permitted Refinancing Indebtedness in respect of any such Indebtedness in an aggregate outstanding principal amount not to exceed $485,000,000 (as reduced by any repayments or prepayments of

principal of Term Loans thereunder (other than pursuant to the incurrence of Permitted Refinancing Indebtedness in respect thereof) but increased by, in the case of any Permitted Refinancing Indebtedness, any additional amounts permitted to be issued or incurred in accordance with clause (a) of the definition of Permitted Refinancing Indebtedness);

(q) to the extent they constitute Indebtedness, indemnities under the Project Documents; and

(r) Indebtedness of the Loan Parties under credit cards or similar arrangements in an amount from time to time outstanding not to exceed $100,000.

Section 6.02. Liens. The Borrower shall not, and it shall not permit any other Loan Party to, directly or indirectly, create, incur, assume or permit to exist any Lien on or with respect to the Pledged Collateral or any other property or asset of any kind of any Loan Party, whether now owned or hereafter acquired, or any income or profits therefrom, except:

(a) Liens in favor of the Collateral Agent or the Administrative Agent for the benefit of Secured Parties granted pursuant to any Loan Document (including any Liens granted pursuant to Section 2.23);

(b) Liens for Taxes (i) not yet due and payable (or not delinquent by more than 30 days), (ii) that are payable without penalty (and no enforcement rights with respect thereof are effective) or (iii) that are being contested in compliance with Section 5.03, or are with respect to Taxes that are not material and are being contested in good faith by appropriate proceedings with provision for adequate reserves;

(c) statutory Liens of landlords, banks (and rights of set-off), carriers, warehousemen, mechanics, repairmen, workmen and materialmen, and other similar Liens imposed by law, in each case incurred in the ordinary course of business or in connection with the development, construction or operation of the Project (i) for amounts not yet overdue or (ii) for amounts that are overdue and that (in the case of any such amounts overdue for a period in excess of ten (10) Business Days) are either insured over, in a manner reasonably satisfactory to the Collateral Agent, by the Title Company or are being contested in good faith by appropriate proceedings, so long as such reserves or other appropriate provisions, if any, as shall be required by GAAP shall have been made for any such contested amounts and, in the case of a lien with respect to any Collateral, such proceedings (or orders entered in connection with such proceedings) have the effect of preventing the forfeiture or sale of the property subject to any such Lien;

(d) Liens incurred or Liens on deposits made in the ordinary course of business in connection with workers' compensation, unemployment insurance and other types of social security, or to secure the performance of tenders, statutory obligations, surety, stay, judgment and appeal bonds, bids, leases, government contracts, trade contracts, performance and return-of-money bonds and other similar obligations (exclusive of obligations for the payment of borrowed money), so long as no foreclosure, sale or similar proceedings have been commenced or, if commenced, have been stayed, with respect to any portion of the Collateral on account thereof;

(e) easements, rights-of-way, navigational servitudes restrictions, encroachments, and other encumbrances, minor defects or irregularities in title, in each case which do not and will not interfere in any material respect with the ordinary conduct of operations of the Project or of the business of the Loan Parties;

(f) any interest or title of a lessor, sublessor, licensor or sublicensor under any lease of real estate or personal property permitted hereunder;

(g) Liens solely on any cash earnest money deposits made by any Loan Party in connection with any letter of intent or purchase agreement permitted hereunder;

(h) purported Liens evidenced by the filing of precautionary UCC financing statements relating solely to operating leases of personal property entered into in the ordinary course of business;

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

(j) any zoning, land use, building or other law or right reserved to or vested in any governmental office or agency to control or regulate the use of any real property;

(k) licenses of patents, trademarks and other Intellectual Property rights granted by any Loan Party in the ordinary course of business;

(l) Liens existing on the date of this Agreement and set forth in Schedule 6.02 or on any title policy delivered pursuant to Section 4.01(l); provided that such Liens shall secure only those obligations which they secure on the date hereof and Permitted Refinancing Indebtedness in respect thereof and, in the case of Liens described in Schedule 6.02, shall encumber only those assets which they encumber as of the date hereof;

(m) Liens securing Indebtedness permitted pursuant to Section 6.01(j); provided that any such Lien shall encumber (i) only the assets (including Specified FF&E Collateral (as defined in the Term Loan Agreement) and the proceeds thereof) acquired, leased, financed or refinanced with the proceeds of such Indebtedness (all of which assets, other than those relating to heating, ventilation and air conditioning, shall be of a type that is readily removable from, and not integral to, the structure of the Project), (ii) other assets (all of which assets, other than those relating to heating, ventilation and air conditioning, shall be of a type that is readily removable from, and not integral to, the structure of the Project) acquired, leased financed or refinanced with Indebtedness permitted under Section 6.01(j) (including Specified FF&E Collateral (as defined in the Term Loan Agreement) and any proceeds thereof) owing to the same Person or an Affiliate of such Person that is secured by the assets described in clause (i), and (iii) in the case of clauses (i) and (ii), accounts holding solely proceeds of such financings or proceeds of any assets acquired with the proceeds of any such financings; provided, further, that in connection with the granting of any Liens permitted by this Section 6.02(m), the Administrative Agent shall be authorized to direct the Collateral Agent to (and shall at the request of the Borrower) take any actions contemplated by Section 8.09(a) in connection therewith (including, by executing appropriate lien releases or, at the request of the Borrower, lien subordination agreements in favor of the holder or holders of such Liens, in either case with respect

to the equipment or other assets (including Specified FF&E Collateral (as defined in the Term Loan Agreement)) subject to such Liens);

(n) bankers' Liens, rights of setoff and other similar Liens existing solely with respect to Cash and Cash Equivalents on deposit in one or more accounts maintained by any Loan Party, in each case granted in the ordinary course of business in favor of the bank or banks or securities intermediaries with which such accounts are maintained, securing amounts owing to such bank or securities intermediary with respect to cash management and operating and securities account arrangements, including those involving pooled accounts and netting arrangements; provided that in no case shall any such Liens secure (either directly or indirectly) the repayment of any Indebtedness;

(o) space leases and subleases to the extent permitted under Section 6.03(b) and the IDA Lease Agreement, and any leasehold mortgage in favor of any party financing the lessee under any such lease or sublease; provided, that no Loan Party is liable for the payment of any principal of, or interest, premiums or fees on, such financing;

(p) so long as the applicable Loan Party is using commercially reasonable efforts to terminate such filings, UCC financing statements or other public notices of Liens (i) filed by Persons without the authorization of the applicable Loan Party and (ii) purporting to secure obligations that either (x) do not exist or (y) are not secured by Liens on such Loan Party's properties (other than UCC financing statements described in Section 6.02(h));

(q) to the extent constituting Liens, any obligations or duties of any Loan Party to any municipality or public authority with respect to any franchise, grant, license or permit provided by such municipality or public authority to such Loan Party in furtherance of the ordinary course conduct of the business of such Loan Party;

(r) Liens imposed pursuant to Section 2-507 of the UCC;

(s) Liens arising out of judgments, attachments or awards not resulting in an Event of Default and in respect of which such Loan Party shall in good faith be prosecuting an appeal or proceedings for review in respect of which there shall be secured a subsisting stay of execution pending such appeal or proceedings and, in the case of any such Lien which has or may become a Lien against any of the Collateral, at the option and at the request of the Administrative Agent, to the extent such Lien is in an amount in excess of $1,000,000, the appropriate Loan Party shall maintain cash reserves or a credit worthy bond in an amount sufficient to pay and discharge such Lien and the Administrative Agent's reasonable estimate of all interest and penalties related thereto;

(t) Liens on insurance policies and the proceeds thereof (whether accrued or not), in each case, securing the financing of premiums with respect thereto pursuant to Section 6.01(n);

(u) on or prior to the Completion Date, Liens incurred on cash collateral not to exceed $5,000,000 during the term of this Agreement disbursed pursuant to Section 4.7 of the Building Loan Disbursement Agreement and provided to bonding companies, Governmental Authorities, providers of services or letter of credit providers to any such Persons, in each case in connection

with the provision of security to providers of services, or Governmental Authorities with jurisdiction over services to be provided, in connection with the development of the Project; provided that to the extent provided in connection with bonding or letters of credit, such Liens shall be limited to cash collateral no greater than 105% of the face amount of the applicable bonds or letters of credit;

(v) Liens on cash collateral securing Indebtedness permitted pursuant to Section 6.01(c), provided that (x) such cash collateral shall not exceed in the aggregate the principal amount of Indebtedness permitted pursuant to such Section 6.01(c) and (y) such liens shall be limited to cash collateral provided to support such Indebtedness;

(w) other Liens securing liabilities in an aggregate amount not to exceed $10,000,000 at any time outstanding;

(x) so long as the Intercreditor Agreement is in effect and subject to the terms thereof, Liens on the Collateral securing Term Loan Obligations under the Term Facility Documents, the Specified Cash Management Agreements (as defined in the Term Loan Agreement) and the Specified Hedging Agreements (as defined in the Term Loan Agreement) that are *pari passu* with the Liens granted to the Secured Parties under the Security Documents;

(y) leases or subleases granted to third parties in accordance with any applicable terms of this Agreement and the Collateral Documents and not interfering in any material respect with the ordinary conduct of the business of the Loan Parties;

(z) Liens on property of a Person existing at the time such Person became a Loan Party, is merged into or consolidated with or into, or wound up into, Borrower or any other Loan Party; provided, that such Liens were in existence prior to the consummation of, and were not entered into a contemplation of, such acquisition, merger or consolidation or winding up and do not extend to any other assets other than those of the Person acquired by, merged into or consolidated with Borrower or such other Loan Party;

(aa) Liens on property existing at the time of acquisition thereof by Borrower or any other Loan Party; provided that such Liens were in existence prior to the consummation of, and were not entered into in contemplation of, such acquisition and do not extend to any other assets other than those so acquired;

(bb) Liens incurred on cash collateral not to exceed $4,000,000 at any time outstanding securing obligations to hedge counterparties under Hedging Agreements; and

(cc) Liens granted by a Loan Party to secure performance in connection with operating leases of personal property made in the ordinary course of business to which such Loan Party is a party as lessee (including leases of Specified FF&E Collateral (as defined in the Term Loan Agreement)), so long as such Liens attach only to the assets subject to such operating leases.

Section 6.03. Real Property.

(a) The Borrower shall not, and shall not permit any other Loan Party to, acquire from a party that is not a Loan Party a fee, leasehold, material easement or other material interest in any real property (excluding the acquisition (but not the exercise) of any options to acquire any such interests in real property) unless (i) the Borrower or such other Loan Party shall have delivered to the Administrative Agent, on behalf of the Secured Parties, a Phase I environmental site assessment report (dated not later than six (6) months prior to such acquisition) with respect to such real property, reasonably satisfactory to the Administrative Agent in scope and form, along with a corresponding reliance letter from an environmental consultant reasonably satisfactory to the Administrative Agent and (ii) if Hazardous Materials were found in, on or under such real property pursuant to such Phase I report in a manner that could reasonably be expected to result in a material Environmental Liability to such Person or a Phase II report is recommended by the findings of such Phase I report, the Borrower or such other Loan Party shall have delivered to the Administrative Agent, on behalf of the Secured Parties (A) a Phase II report with respect to such real property along with a corresponding reliance letter from an environmental consultant reasonably satisfactory to the Administrative Agent, indicating, in form and substance reasonably satisfactory to the Administrative Agent, that no Hazardous Materials were found in, on or under such real property in a manner that could reasonably be expected to result in a material Environmental Liability to such Person or (B) to the extent clause (A) above is inapplicable and if requested by the Administrative Agent, an environmental indemnity agreement, in form and substance reasonably satisfactory to the Administrative Agent, with respect to such real property pursuant to which an indemnitor reasonably satisfactory to the Administrative Agent indemnifies the Borrower or such other Loan Party and the Secured Parties from any and all damages or other liabilities relating to or arising from Hazardous Materials then in, on or under such real property or otherwise caused by or attributable to such indemnitor or the Loan Party acquiring an interest in real property. Notwithstanding anything to the contrary in this Section 6.03(a), the Loan Parties shall not be required to deliver a Phase I Report or a Phase II Report with respect to (i) the acquisition of a fee interest in the Property underlying the Ground Lease, the Entertainment Village Lease and the Golf Course Lease pursuant to the Purchase Option Agreement, (ii) any fee, leasehold, easement or other interest in real property acquired after the Closing Date, in each case, to the extent the Administrative Agent determines that the size, location and proposed use thereof are insufficient to justify the time and expense of obtaining such reports or (iii) any Excluded Leased Real Property (other than any Real Property described in clause (f) of the definition thereof).

(b) The Borrower shall not, and shall not permit any other Loan Party to, enter into any space leases or subleases of any Real Property as lessor or sublessor with any party that is not a Loan Party unless (i) such transaction, lease or sublease is entered into either (A) pursuant to Section 6.09(b) or otherwise in the ordinary course of business for the purposes of provision of services to patrons or anticipated patrons of the Project and, in the Borrower's good faith judgment, is reasonably expected to enhance the operation of the Project or (B) pursuant to Section 6.09(g), and (ii) no gaming, hotel or casino operations (other than the operation of arcades and games for minors) may be conducted on any space that is subject to such transaction, lease or sublease other than by and for the benefit of the Loan Parties; provided, that (x) the Administrative Agent shall, upon the Borrower's request, agree to direct the Collateral Agent to provide the tenant under any such lease or sublease with a non-disturbance and attornment agreement in form and substance reasonably satisfactory to the Administrative Agent and (y) unless the Administrative Agent shall otherwise

waive such requirement, with respect to any such lease or sublease having reasonably anticipated annual rents (whether due to base rent, fixed rents, reasonably anticipated percentage rents or other reasonably anticipated rental income from such lease or sublease) in excess of $500,000 during the term of such lease or sublease, the applicable Loan Party(ies) shall enter into, and cause the tenant under any such lease or sublease to enter into with the Collateral Agent a subordination, non-disturbance and attornment agreement, in each case in form and substance reasonably satisfactory to the Administrative Agent. This clause (b) shall not apply to the IDA Lease Agreement.

Section 6.04. **No Further Negative Pledges**. Except with respect to (a) specific property encumbered to secure payment of particular Indebtedness, liabilities or leases permitted hereunder or to be sold pursuant to an executed agreement with respect to a permitted Asset Sale or other permitted disposition, (b) restrictions by reason of customary provisions restricting assignments, subletting or other transfers contained in leases, licenses (including intellectual property licenses and Gaming Licenses) and other agreements or restrictions on cash or other deposits entered into in the ordinary course of business (provided that such restrictions are limited to such leases, licenses or agreements or the property or assets subject to such Liens, leases, licenses or agreements, as the case may be), (c) restrictions under applicable Gaming Laws, (d) the Term Facility Documents, (e) conditions set forth in Indebtedness incurred pursuant to Section 6.01(j), and the guarantees, collateral documents or intercreditor agreements relating thereto, in each case, to the extent such conditions have been satisfied in connection with the initial incurrence of the applicable Indebtedness, and (f) the Gaming License, the Borrower shall not, and shall not permit any other Loan Party to, enter into any agreement prohibiting the creation or assumption of any Lien upon any of its properties or assets to secure the Obligations, whether now owned or hereafter acquired, and the Borrower shall not permit the Equity Pledgor to enter into any agreement prohibiting the creation or assumption of any Lien upon any Pledged Collateral (as defined in the Equity Pledge Agreement) to secure the Obligations.

Section 6.05. **Restricted Junior Payments**. The Borrower shall not, and it shall not permit any other Loan Party, through any manner or means or through any other Person to, directly or indirectly, declare, order, pay, make or set apart any sum for any Restricted Junior Payment other than:

(a) so long as no Default under Section 7.01(c) or Section 7.01(h) nor any Event of Default shall have occurred and be continuing (or would result therefrom), dividends or other distributions of amounts reimbursed under Section 4.4 of the Building Loan Disbursement Agreement or under Section 4.2 of the Project Disbursement Agreement;

(b) dividends or other payments (including pursuant to a tax sharing agreement) to the direct or indirect owners of the Borrower with respect to any taxable year during which the Borrower is a Pass Through Entity or a member of consolidated, combined or unitary tax group of which a direct or indirect owner of the Borrower is the common parent, in an aggregate amount not to exceed the Tax Amount for such taxable year (it being understood and agreed that (i) such dividends or other payments may be paid on a quarterly basis based on estimates of the Tax Amount made by the Borrower in good faith, (ii) without limiting the provisions of preceding sub-clause (i), to the extent that any such dividends or other distributions exceed (or are less than) the Tax Amount for

such taxable year as a result of such quarterly estimates, the amount permitted to be paid pursuant to this clause (b) in the immediately succeeding taxable year (or, if necessary, the subsequent taxable years) shall, without duplication, be reduced or increased, as applicable, by a like amount and (iii) any portion of the Tax Amount for such taxable year that is attributable to an Unrestricted Subsidiary shall be payable pursuant to this clause (b) only to the extent cash distributions are received by the Loan Parties from such Unrestricted Subsidiaries);

(c) dividends, other distributions or payments to the Equity Pledgor or Empire, such dividends and distributions not to exceed in any Fiscal Year 1.00% of the net revenues of the Loan Parties in such Fiscal Year;

(d) so long as no Default under Section 7.01(c) or Section 7.01(h) nor any Event of Default has occurred and is then continuing (or would result therefrom), dividends or other distributions (not in excess of $1,000,000 in the aggregate during the term of this Agreement) to direct or indirect parent entities of the Borrower in amounts necessary to repurchase Capital Stock in, or Indebtedness of, such parent entities to the extent required by the Gaming Authorities for not more than the fair market value thereof in order to avoid the suspension, revocation or denial by the Gaming Authorities of a Gaming License; provided, that so long as such efforts do not jeopardize any such Gaming License, such parent entities shall have diligently and in good faith attempted to find a third-party purchaser(s) for such Capital Stock or Indebtedness and no third-party purchaser(s) for such Capital Stock or Indebtedness acceptable to the Gaming Authorities was willing to purchase such Capital Stock or Indebtedness within a time period acceptable to the Gaming Authorities;

(e) so long as (x) no Default or Event of Default shall have occurred and be continuing or shall be caused thereby and (y) the pro forma First Lien Leverage Ratio as of the last day of the most recently ended Fiscal Quarter for which financial statements have been delivered with respect thereto pursuant to Section 5.01(b) or Section 5.01(c) is not greater than 2.75:1.00 (determined as if such dividend, distribution or other payment, together with any other dividend, distribution or other payment made in reliance on this clause (e) and any Investments made in reliance on Section 6.07(m) and, in each case, any Indebtedness incurred in connection therewith or with respect thereto after the last day of such Fiscal Quarter, were made or incurred on such last day), Restricted Junior Payments on any date in an amount not to exceed the Available Amount on such date; provided that in no case shall dividends be made pursuant to this clause (e) prior to the Full Opening Date; and

(f) to the extent constituting Restricted Junior Payments, payments associated with "phantom equity" compensatory arrangements entered into in the ordinary course of business with officers and employees of the Loan Parties not to exceed $1,000,000 in the aggregate during the term of this Agreement.

Section 6.06. Restrictions on Subsidiary Distributions. Except as provided herein and in the Term Loan Agreement, the Borrower shall not, and it shall not permit any other Loan Party to, create or otherwise cause or suffer to exist or become effective, any consensual encumbrance or restriction of any kind on the ability of any Loan Party (other than the Borrower) to (a) pay dividends or make any other distributions on any of its Capital Stock owned by the Borrower or any other Loan Party, (b) repay or prepay any Indebtedness owed by such Loan Party to the Borrower

or any other Loan Party, (c) make loans or advances to the Borrower or any other Loan Party, or (d) transfer (other than by the granting of a Lien to the extent permitted by Section 6.02 and Section 6.04) any of its property or assets to the Borrower or any other Loan Party other than restrictions (i) in agreements evidencing Indebtedness permitted by Section 6.01(j) or any related collateral documents that impose restrictions on the property so acquired, (ii) by reason of customary provisions restricting assignments, subletting or other transfers contained in leases, licenses, joint venture agreements and other agreements entered into in the ordinary course of business, (iii) that are or were created by virtue of any transfer of, agreement to transfer or option or right with respect to any property, assets or Capital Stock not otherwise prohibited under this Agreement, (iv) any instrument governing Indebtedness or equity securities of a Person acquired by a Loan Party as in effect at the time of such acquisition (except to the extent such Indebtedness was incurred in connection with or in contemplation of such acquisition), which encumbrance or restriction is not applicable to any Person, or the properties or assets of any Person, other than the Person, or the property or assets of the Person, so acquired, (v) with respect to restrictions of the type set forth in clause (d) above, as set forth in any agreement relating to Indebtedness permitted to be secured by Permitted Liens so long as such restrictions only extend to the assets secured by such Permitted Liens, and (vi) as required by applicable law.

Section 6.07. Investments. The Borrower shall not, and it shall not permit any other Loan Party to, directly or indirectly, make or own any Investment in any Person, including any Unrestricted Subsidiary or Joint Venture, except:

(a) Investments in Cash and Cash Equivalents;

(b) equity Investments owned as of the Closing Date in any of its Subsidiaries and equity Investments made after the Closing Date in connection with the initial formation and capitalization of any Person that becomes, concurrently with such Investment, a Subsidiary Guarantor;

(c) Investments (i) in any Securities received in satisfaction or partial satisfaction of obligations from financially troubled account debtors and (ii) in the form of deposits, prepayments and other credits to lessors, suppliers or utilities made in the ordinary course of business consistent with the applicable past practices of the Borrower or such Loan Party, as applicable;

(d) (i) Investments by the Borrower in any Subsidiary Guarantor and (ii) Investments by any Subsidiary Guarantor in the Borrower or any other Subsidiary Guarantor; provided that any such Investments in the form of intercompany loans shall only be permitted to the extent in compliance with Section 6.01(b);

(e) loans and advances to employees of the Loan Parties made in the ordinary course of business in an aggregate principal amount not to exceed $1,000,000 at any time outstanding;

(f) Investments existing on the date of this Agreement and set forth in Schedule 6.07;

(g) Investments received in connection with the bankruptcy or reorganization of, or settlement of delinquent accounts and disputes with, customers and suppliers, in each case in the ordinary course of business;

(h) Investments consisting of Securities and other non-cash consideration received as consideration for an Asset Sale permitted by Section 6.09;

(i) purchases or other acquisitions of inventory, materials, equipment and Intellectual Property in the ordinary course of business;

(j) extensions of trade credit in the ordinary course of business (including promotions and advances to and receipt of checks and other instruments from patrons of the Loan Parties' gaming operations consistent with ordinary course gaming operations, including advances and other credit arrangements pursuant to Section 1339 of the New York State Racing, Pari-Mutuel Wagering and Breeding Law);

(k) Investments under any Hedging Agreements permitted by Section 6.17;

(l) Investments in an Unrestricted Subsidiary or a Joint Venture formed or otherwise entered into pursuant to Section 6.15 for the primary purposes of providing food and beverage venues or other amenities to or for the benefit of patrons of the Project located at or near the Project so long as no other investor in any such Unrestricted Subsidiary or Joint Venture is an Affiliate of the Borrower; provided that the aggregate amount of all Investments made pursuant to this clause (l) shall not exceed $10,000,000;

(m) so long as (x) no Default or Event of Default shall have occurred and be continuing or shall be caused thereby and (y) the pro forma First Lien Leverage Ratio as of the last day of the most recently ended Fiscal Quarter for which financial statements have been delivered with respect thereto pursuant to Section 5.01(b) or Section 5.01(c) is not greater than 3.00:1.00 (determined as if such Investment, together with any other Investment made in reliance on this clause (m) and all Restricted Payments made in reliance on Section 6.05(e) and, in each case, any Indebtedness incurred in connection therewith or with respect thereto after the last day of such Fiscal Quarter, were made or incurred on such last day), Investments on any date in an amount not to exceed the Available Amount on such date; provided that in no case shall Investments be made pursuant to this clause (m) prior to the Full Opening Date;

(n) other Investments in an aggregate amount not to exceed $7,500,000.

(o) loans or advances to employees or directors or former employees or directors to fund the exercise price of options granted under Empire's stock option plans or agreements or employments agreements, as approved by Empire's Board of Directors (provided that the amount of such loans and advances shall be contributed to the Borrower in Cash as common equity);

(p) Investments consisting of securities or other obligations received in settlement of debt created in the ordinary course of business and owing to such Loan Party or in satisfaction of judgments; and

(q) Investments on any date in an amount not to exceed the Permitted Equity Contribution Amount on such date.

Section 6.08. Financial Covenants.

(a) Interest Coverage Ratio. Beginning with the first full Fiscal Quarter following the Full Opening Date, the Borrower shall not permit the Interest Coverage Ratio as of the last day of any Fiscal Quarter to be less than the applicable correlative ratio set forth on Schedule 6.08; provided that for purposes of determining the amount of Consolidated Adjusted EBITDA and Consolidated Cash Interest Expense when determining the Interest Coverage Ratio for the first, second and third full Fiscal Quarters following the Full Opening Date, (i) such Consolidated Adjusted EBITDA shall be an amount equal to the sum of (I) Consolidated Adjusted EBITDA determined for the period commencing with the first full Fiscal Quarter following the Full Opening Date through the last day of the Fiscal Quarter then being tested and (II) the amount set forth in Schedule 1.01(b) applicable to the Fiscal Quarter then being tested and (ii) such Consolidated Cash Interest Expense shall be an amount equal to the sum of such Consolidated Cash Interest Expense determined for the period commencing with the first full Fiscal Quarter following the Full Opening Date through the last day of the Fiscal Quarter then being tested multiplied by a factor of 4, 2 and 4/3, respectively.

(b) First Lien Leverage Ratio. Beginning with the first full Fiscal Quarter following the Full Opening Date, the Borrower shall not permit the First Lien Leverage Ratio as of the last day of any Fiscal Quarter, to exceed the applicable correlative ratio set forth on Schedule 6.08; provided that for purposes of determining the amount of Consolidated Adjusted EBITDA when determining the First Lien Leverage Ratio for the first, second and third full Fiscal Quarters following the Full Opening Date, such Consolidated Adjusted EBITDA shall be an amount equal to the sum of (i) Consolidated Adjusted EBITDA determined for the period commencing with the first full Fiscal Quarter following the Full Opening Date through the last day of the Fiscal Quarter then being tested and (ii) the amount set forth in Schedule 1.01(b) applicable to the Fiscal Quarter then being tested.

(c) Maximum Consolidated Capital Expenditures. The Borrower shall not, and it shall not permit the other Loan Parties to, make or incur Consolidated Capital Expenditures, in any Fiscal Year, in an aggregate amount for the Borrower and the other Loan Parties, in excess of the correlative amount set forth on Schedule 6.08. Notwithstanding the foregoing, (i) the applicable amounts on Schedule 6.08 shall be increased from time to time by the Permitted Equity Contribution Amount or proceeds of Subordinated Indebtedness for application to Consolidated Capital Expenditures (other than proceeds of Specified Equity Contributions, proceeds otherwise applied to the repayment of Indebtedness, payments required by the Completion Guaranty (as defined in the Term Loan Agreement), payments made in accordance with either Disbursement Agreement or payments of Project Costs) but only to the extent such proceeds are contributed and/or extended and so applied for Consolidated Capital Expenditures during the relevant Fiscal Year, (ii) if any amount referred to in the table on Schedule 6.08 expended hereunder is not expended in the Fiscal Year for which it is permitted, 75% of any such non-expended amounts (the "Carryover Amount") may be carried over for expenditure in the next succeeding Fiscal Year (with amounts expended in any Fiscal Year applied first against the Carryover Amount (if any), second against amounts set forth on Schedule 6.08 in respect of such Fiscal Year and third against the Additional Capital Expenditures Amount), (iii) payments made with the Net Cash Proceeds of Asset Sales and Recovery Events (in each case, without giving effect to the provisos contained in the definition thereof) in accordance with the

definition of Net Cash Proceeds and contemporaneous exchanges or trade-ins of equipment or inventory (to the extent of the fair market value of any such exchanged or traded-in equipment or inventory), shall in each case not be considered Consolidated Capital Expenditures for purposes of this Section 6.08(c), (iv) an additional amount equal to the aggregate fair market value (as determined by the Borrower in good faith) of Property (other than Cash or Cash Equivalents) received by the Borrower after the Full Opening Date as equity capital contributions (the "Additional Capital Expenditures Amount") shall be available to make Consolidated Capital Expenditures, (v) without duplication of preceding clause (iii), Consolidated Capital Expenditures made in repair, replacement or restoration as a result of a Recovery Event in aggregate amount not to exceed the deductible under the insurance policy pursuant to which the Borrower has received Net Cash Proceeds in respect of such Recovery Event, shall in each case not be considered Consolidated Capital Expenditures for purposes of this Section 6.08(c), (vi) expenditures made with the Available Amount shall not be considered Capital Expenditures for purposes of this Section 6.08(c), and (vii) Golf Course Expenditures (as defined in the Term Loan Agreement) in an amount not to exceed $25,000,000 shall not be considered Consolidated Capital Expenditures for purposes of this Section 6.08(c).

Section 6.09. Fundamental Changes; Disposition of Assets. The Borrower shall not, and it shall not permit any other Loan Party to, merge or consolidate, or liquidate, wind-up or dissolve itself (or suffer any liquidation or dissolution), or convey, sell, lease or sub-lease (as lessor or sublessor), exchange, transfer or otherwise dispose of, in one transaction or a series of transactions, all or any part of its business, assets or property of any kind whatsoever, whether real, personal or mixed and whether tangible or intangible, whether now owned or hereafter acquired, except:

(a) (x) (i) any Subsidiary Guarantor may be liquidated, wound up or dissolved, with the result that its assets (including licenses), if any, and ongoing business are distributed to the Borrower or any other Subsidiary Guarantor, (ii) all or any part of any Subsidiary Guarantor's business, property or assets may be conveyed, sold, leased, transferred or otherwise disposed of, in one transaction or a series of transactions, to the Borrower or any other Subsidiary Guarantor or (iii) any Subsidiary Guarantor may be merged with or into the Borrower or any other Subsidiary Guarantor; provided, in the case of any such merger involving the Borrower, the Borrower shall be the continuing or surviving Person or (y) so long as no Default or Event of Default exists or would result therefrom, the Borrower may merge or consolidate with any other Person; provided that if the Person formed by or surviving any such merger or consolidation is not the Borrower (any such Person, the "Successor Company"), (A) the Successor Company shall be an entity organized or existing under the laws of the United States of America, any State thereof or the District of Columbia, (B) the Successor Company shall expressly assume all the obligations of the Borrower under this Agreement and the other Loan Documents to which the Borrower is a party pursuant to a supplement hereto or thereto reasonably satisfactory to the Administrative Agent and the Collateral Agent, (C) each Subsidiary Guarantor, unless it is the Successor Company, shall have confirmed that its Subsidiary Guaranty shall apply to the Successor Company's obligations under the Loan Documents, (D) each Subsidiary Guarantor, unless it is the Successor Company, shall have, by a supplement to the Pledge and Security Agreement and other applicable Security Documents, confirmed that its obligations thereunder shall apply to its guarantee of the Successor Company's obligations under the Loan Documents, (E) the Equity Pledgor shall have confirmed that the Equity Pledge Agreement

shall apply to the Successor Company's obligations under the Loan Documents, (F) the Equity Pledgor shall have, by a supplement to the Equity Pledge Agreement and other applicable Security Documents, confirmed that its obligations thereunder shall apply to its guarantee of the Successor Company's obligations under the Loan Documents, and (G) the Borrower shall have delivered to the Administrative Agent an officer's certificate and an opinion of counsel as to the enforceability of this Agreement, the Pledge and Security Agreement, the Subsidiary Guaranty, the Equity Pledge Agreement and the other Security Documents as so supplemented and the perfection of the Liens under the Security Documents; provided, further, that if the foregoing conditions are satisfied, the Successor Company will succeed to, and be substituted for, the Borrower under this Agreement and the other Loan Documents;

(b) conveyances, sales, leases, subleases, exchanges, transfers or other dispositions of assets that do not constitute Asset Sales;

(c) Asset Sales, the proceeds of which (valued at the principal amount thereof in the case of non-Cash proceeds consisting of notes or other debt Securities and valued at fair market value in the case of other non-Cash proceeds), when aggregated with the proceeds of all other Asset Sales made during the term of this Agreement, are less than $20,000,000; provided (1) the consideration received for such assets shall be in an amount at least equal to the fair market value thereof (determined in good faith by the applicable Loan Party), (2) no less than 75% thereof shall be paid in Cash and/or Cash Equivalents, (3) in no event shall any such Asset Sale involve any Real Property (except as permitted pursuant to clauses (f) and (g) below) or materially and adversely affect the Loan Parties' ability (x) if prior to the Completion Date, to develop, construct and operate the Project in accordance in all material respects with the Plans and Specifications and the Loan Documents and (y) if on or after the Casino Opening Date, to operate the Project as contemplated by the Loan Documents and (4) the Net Cash Proceeds thereof shall be applied as required by Section 2.13(a);

(d) the sale of past-due receivables for purposes of collection;

(e) conveyances, sales, leases, subleases, exchanges, transfers or other dispositions of equipment valued at not more than $500,000 in the aggregate in any Fiscal Year to employees of the Loan Parties in the ordinary course of business;

(f) the IDA Lease Agreement and other space leases or subleases of portions of the Real Property owned or leased by the Loan Parties, entered into by the applicable Loan Party in accordance with the provisions of Section 6.03(b); and

(g) the dedication of Real Property or other sales, assignments or dispositions of Real Property (including pursuant to a lease or sublease and/or pursuant to amendment to the Ground Lease, the Entertainment Village Lease or the Golf Course Lease to reduce the Real Property subject thereto) not to exceed 30 acres of Real Property in the aggregate, so long as such dedications, sales, assignments and/or dispositions do not materially impair or interfere with, the operations (or intended use or operations) of the Project or the business operations of any Loan Party, do not relate to Real Property upon which the principal improvements related to the Project are located and no gaming or casino operations (other than the operation of arcades and games for minors) may be

conducted on any Real Property that is subject to such dedications, sales, assignments and/or dispositions; provided that in order to accomplish the foregoing the Loan Parties may record, or cause to be recorded, lot line adjustments and/or subdivide the Real Property so long as (i) in the case of any such subdivision, such real property is subdivided such that it will represent a separate municipal tax parcel independent of the remainder of the Real Property of the Loan Parties, (ii) such lot line adjustment or subdivision does not render the remainder of the Real Property (or any portion thereof), or the operations thereon, as non-conforming under applicable zoning and land use ordinances, and does not otherwise result in the violation in any material respect of any applicable variances, special exceptions, conditional use approvals, covenants, conditions, restrictions or any other Legal Requirements or approvals to which the remainder of the Real Property (or any portion thereof) or the operations thereon or the Loan Parties are subject and (iii) the Loan Parties have received all necessary governmental approvals with respect to such lot line adjustment or subdivision, including from the Gaming Authorities; provided, further that with respect to any such dedications, sales, assignments and/or dispositions (A) the remaining Real Property and/or the Loan Parties have been given all easements and other rights-of-way across any Real Property so dedicated, sold, assigned or otherwise disposed of as necessary or, in the reasonable determination of the Borrower, desirable for the continued operations of the Project, including legal and physical access to public rights of way and with respect to utilities, ingress and egress and fire and safety access and (B) the Collateral Agent shall have received affirmative endorsements to the title insurance policies with respect to the remaining Real Property or such other evidence, in each case in form and substance reasonably satisfactory to the Administrative Agent, confirming that the Lien of the Mortgages and coverage of the title insurance policies with respect to the remaining Real Property have not been impaired by such dedication, sale, assignment or other disposition and/or lot line adjustment or subdivision, as the case may be (and, to the extent an amendment, modification or other supplement to any Mortgage is required with respect thereto, including for purposes of amending legal descriptions attached to any Mortgage, the Administrative Agent shall direct (without the consent of the Lenders) the Collateral Agent to make such amendments, modifications or other supplements thereto (it being understood that any such amendments, modifications or other supplements must be in form and substance reasonably satisfactory to the Administrative Agent)).

Section 6.10. Disposal of Subsidiary Interests. Except for any sale of all of its interests in the Capital Stock of any of the Subsidiary Guarantors in compliance with the provisions of Section 6.09, the Borrower shall not, and it shall not permit any of the Subsidiary Guarantors to, directly or indirectly sell, assign, pledge or otherwise encumber or dispose of any Capital Stock in any of the Subsidiary Guarantors, except (i) to the Borrower or another Subsidiary Guarantor and (ii) the granting of Liens to secure Indebtedness incurred pursuant to Sections 6.01(a) and (p).

Section 6.11. Sales and Lease-Backs. Other than resulting from the IDA Documents or the disposition of assets in connection with the incurrence of Capital Lease Obligations and purchase money Indebtedness permitted pursuant to Section 6.01(j) with respect to such assets, the Borrower shall not, and it shall not permit any other Loan Party to, directly or indirectly, become or remain liable as lessee or as a guarantor or other surety with respect to any lease of any property (whether real, personal or mixed), whether now owned or hereafter acquired, which such Loan Party (a) has sold or transferred or is to sell or to transfer to any other Person (other than the Borrower or any of the other Loan Parties), or (b) intends to use for substantially the same purpose as any other property

which has been or is to be sold or transferred by such Loan Party to any Person (other than the Borrower or any of the other Loan Parties) in connection with such lease.

Section 6.12. Transactions with Shareholders and Affiliates. The Borrower shall not, and it shall not permit any other Loan Party to, directly or indirectly, enter into any transaction (including the purchase, sale, lease or exchange of any property or the rendering of any service, but excluding the Transactions) with, or for the benefit of, any of its Affiliates or to permit any such transaction to exist, unless such transaction is:

(a) on terms that are not less favorable to the Borrower or such other Loan Party than those that might be obtained at the time in a comparable arm's length transaction with Persons who are not Affiliates of the Borrower or such other Loan Party and the Borrower shall have delivered to the Administrative Agent prior to the consummation of any such transaction or series of related transactions that involves aggregate consideration in excess of $5,000,000 a resolution of the Board of Managers of the Borrower as to the fairness to each applicable Loan Party at the time such transaction or series of related transactions is entered into from a financial point of view; provided that in no event shall any transaction entered into pursuant to this clause (a) consist of, contain, or provide for the payment of any management, consulting, advisory or similar fee, benefiting any Affiliate of a Loan Party (other than a Loan Party);

(b) between the Loan Parties;

(c) reasonable and customary fees paid to, and reasonable and customary expenses, reimbursements and indemnification agreements with, members of the board of directors, managing member(s), general partner, manager or similar governing body of the Loan Parties;

(d) associated with employment agreements, compensation agreements, non-competition and confidentiality arrangements, employee benefit plans, equity or equity-based or other incentive plans, indemnification provisions and other similar compensatory arrangements with officers, employees and directors of the Loan Parties in the ordinary course of business or as approved by a majority of the independent members of the Board of Managers of the Borrower;

(e) the making of Restricted Junior Payments permitted by Section 6.05;

(f) the making of payments by the Borrower to Affiliates as reimbursements in the ordinary course of business (without any such payments intended in good faith to provide any fee, profit or similar component benefiting any Affiliate of a Loan Party) for:

(i) payments made by such Affiliates to Persons that are not Affiliates of the Borrower for products and/or services (including advertising, marketing and insurance products and services) purchased by such Affiliates for utilization or application for the benefit of the gaming, lodging and leisure properties directly or indirectly owned by such Affiliates, such reimbursement to not exceed the pro rata amount of such payments allocated in good faith to the Project after taking into consideration the direct benefits obtained by the Project therefrom as compared to the benefits obtained therefrom by the other gaming, lodging and leisure properties directly or indirectly owned by such Affiliates; and

(ii) to the extent the Loan Parties utilize services of employees of such Affiliates in lieu of such services being provided by employees of the Loan Parties, whether pursuant to an employee sharing arrangement or other similar program, the salary and benefits of such employees and other office/clerical overhead incurred by such Affiliates with respect to such employees (provided such reimbursement is only for such portion of such employees' salary and benefits and related office/clerical overhead as are allocated in good faith to the Loan Parties and the Project) and reasonable travel (including airline travel (provided that any travel expenses pertaining to the expenses of private/chartered aircraft for any given journey shall be reimbursable only in an amount not to exceed the cost of a first-class ticket that could have been purchased on a commercial airline for the same journey on the applicable date)), lodging, food and entertainment expenses of such employees incurred in furtherance of services provided for, or on behalf of, the Project;

(g) related to the provision or purchase of gaming equipment on terms that are not less favorable to the Borrower or such other Loan Party than those that might be obtained at the time in a comparable arm's length transaction with Persons who are not Affiliates of the Borrower or such other Loan Party;

(h) the lease of space on an arm's length basis solely for the operation of a venue within the Project to an Unrestricted Subsidiary or a Joint Venture formed pursuant to Section 6.15;

(i) with an Affiliated Lender (under, and as defined in, the Term Loan Agreement) acquiring Term Loans in accordance with Section 9.04(g) of the Term Loan Agreement in its capacity as a lender under the Term Facility Documents;

(j) pursuant to the terms and conditions of the Development Documents or Subordinated Indebtedness (provided, that any amendments to the foregoing shall be required to comply with clause (a) above and the other applicable provisions of the Loan Documents);

(k) purchases of materials or services by the Loan Parties in the ordinary course of business pursuant to a shared services agreement or procurement agreement on arm's length terms;

(l) any agreement by an Unrestricted Subsidiary or Joint Venture to pay management fees to the Loan Party directly or indirectly;

(m) Investments permitted by Section 6.07;

(n) set forth on Schedule 6.12 (provided that any amendments to the foregoing shall be required to comply with clause (a) above and the other applicable provisions of the Loan Documents);

(o) contemplated by any Project Document, the Purchase Option Agreement or the Equity Pledge Agreement (provided that any amendments to the foregoing shall be required to comply with clause (a) above and the other applicable provisions of the Loan Documents);

(p) pursuant to joint marketing, cross marketing, procurement, branding and licensing agreements on arm's length terms as approved by the Board of Managers of the Borrower;

(q) the payment of licensing fees to any Affiliate of the Borrower in connection with the licensing of trade names and trademarks pursuant to a license agreement on arm's length terms as approved by the Board of Managers of the Borrower;

(r) the sale, assignment or disposition of Real Property pursuant to Section 6.09(g); or

(s) a branding or licensing agreement (and related and ancillary agreements), entered into from or after the Closing Date, with a Permitted Holder or an Affiliate thereof for use of the name "Resorts World" approved by the Board of Managers of the Borrower, provided, that the aggregate fees payable thereunder shall not exceed for any year of such agreement the correlative amounts set forth in item 7 of Schedule 6.12.

Section 6.13. Conduct of Business.

(a) The Borrower shall not, and it shall not permit any other Loan Party to, engage in any business other than any business or activities engaged in on the Closing Date and any activity or business incidental, related or similar thereto, or any business or activity that is a reasonable extension, development or expansion thereof or ancillary thereto, including the development, construction and operation of the Project and ancillary venues and amenities associated with the Project or related thereto (including venues and amenities to be provided to or for the benefit of patrons of the Project located at or near the Project), and any other business or activity designed to promote, market, support, develop, construct or enhance the gaming, hotel, retail, entertainment and resort business operated or intended to be operated by the Loan Parties, and performing its obligations under the Loan Documents and the Term Facility Documents and any other transaction entered into by such Loan Party in compliance with the terms of the Loan Documents, and performing activities incidental to any of the foregoing businesses and activities.

(b) The Borrower shall not permit any Unrestricted Subsidiary to (i) operate or conduct any gaming or gaming related activities, (ii) pay or make any Restricted Junior Payment to, or make any Investment in, any Affiliate of the Borrower (other than a Loan Party or through a Loan Party to the extent permitted hereunder) or (iii) (other than on an arm's length basis and as otherwise permitted by this Agreement) enter into any other transaction with any Affiliate of the Borrower (other than a Loan Party to the extent otherwise permitted by this Agreement).

Section 6.14. Amendments or Waivers. The Borrower shall not, and it shall not permit any other Loan Party to:

(a) permit any waiver, supplement, modification, amendment, termination or release of, or fail to enforce the terms and conditions of, any of the Material Contracts or any Permits, except to the extent that (x) such waiver, supplement, modification, amendment, termination or release or failure to enforce any Material Contract (including any IDA Document) or Permit could not reasonably be expected to have a Material Adverse Effect or (y) in the case of the IDA Documents, such waiver, supplement, modification, amendment, termination or release or failure to enforce

could not reasonably be expected to materially impair or be materially adverse to the rights or remedies of the Administrative Agent or the Secured Parties with respect to its security interests therein;

(b) amend, modify, supplement or waive, or permit or consent to the amendment, modification, supplement or waiver of, any lease or ground lease under which a Loan Party is the tenant or subtenant and that is material to the Project (including the IDA Leaseback, the Ground Lease, the Entertainment Village Lease and the Golf Course Lease) or any other material property of the Loan Parties if such amendment, modification, supplement or waiver could reasonably be expected to have a Material Adverse Effect or materially impair the rights of the Administrative Agent or the Secured Parties with respect thereto;

(c) amend or modify, or permit the amendment or modification of, its Governing Documents in any manner materially adverse to the Lenders, or as could otherwise reasonably be expected to have a Material Adverse Effect; or

(d) amend, modify, supplement or waive, or permit or consent to the amendment, modification, supplement or waiver of any Gaming License or the Gaming License Conditions if such amendment, modification, supplement or waiver could reasonably be expected to have a Material Adverse Effect or materially impair the rights of the Collateral Agent or the Lenders with respect thereto or create obligations thereunder that conflict with the terms and conditions of the Loan Documents and may jeopardize the Loan Parties' ability to comply with both the terms and conditions of the Gaming License and/or the Gaming License Conditions, on the one hand, and the Loan Documents, on the other hand.

Section 6.15. Limitation on Formation and Acquisition of Subsidiaries and Purchase of Capital Stock.

(a) The Borrower shall not, and shall not permit any of the other Loan Parties to, form, create or acquire any direct or indirect Subsidiary or Unrestricted Subsidiary. Notwithstanding the foregoing, so long as no Default or Event of Default shall have occurred and be continuing or would result therefrom, the Borrower and the other Loan Parties may form, create or acquire (I) new Subsidiaries and (II) Unrestricted Subsidiaries to the extent not in violation of Section 6.07 or Section 6.13; provided, that (i) any such new Subsidiary shall be a direct or indirect wholly owned Subsidiary of the Borrower organized under the laws of the United States or any state thereof, (ii) any such new Subsidiary shall promptly become a Subsidiary Guarantor and otherwise comply with the requirements of Section 5.11, (iii) any such new Subsidiary shall immediately be deemed a "Loan Party" for purposes of this Agreement and the other Loan Documents, (iv) in the case of preceding clause (II), at least five (5) Business Days' prior written notice thereof is given to the Administrative Agent (or such shorter period of time as is acceptable to the Administrative Agent) and (v) the Capital Stock in such new Subsidiary or Unrestricted Subsidiary, to the extent owned by a Loan Party or a Person that is required to become a Loan Party, is pledged pursuant to (and to the extent required by) the applicable Security Document, and the certificates representing such stock, if any, together with stock powers duly executed in blank, are delivered to the Administrative Agent. Notwithstanding anything to the contrary contained in this Agreement, no Loan Party shall (A) own any Capital Stock other than that in Unrestricted Subsidiaries (to the extent otherwise

permitted hereunder) and its Subsidiaries or Investments permitted pursuant to Section 6.07 (including in Unrestricted Subsidiaries) or (B) other than as permitted by clause (b) below, own any interest in a Joint Venture.

(b) Notwithstanding anything to the contrary in clause (a) above, the Loan Parties may enter into and maintain ownership interests in Joint Ventures to provide food and beverage, golf course services or other amenities to be provided to or for the benefit of patrons of the Project at venues at or near the Project; provided, however, (i) in no case will any Joint Venture formed pursuant to this clause (b) conduct gaming or gaming related activities and (ii) all Investments in any such Joint Venture by a Loan Party are permitted by Section 6.07.

Section 6.16. Fiscal Year. The Borrower shall not, and shall not permit any other Loan Party to, change its Fiscal Year-end from December 31.

Section 6.17. Limitation on Hedging Agreements. The Borrower shall not, and shall not permit any other Loan Party to, enter into any Hedging Agreement other than any such agreement required hereunder or otherwise entered into to hedge against fluctuations in (i) interest rates or currency, and (ii) electricity and natural gas prices; provided that, in each case, such agreements or arrangements shall not have been entered into for speculation purposes and shall have been incurred in the ordinary course of business.

Section 6.18. Permitted Activities of the Equity Pledgor. The Borrower shall cause the Equity Pledgor not to (i) sell or otherwise dispose of any Capital Stock in the Borrower; or (ii) fail to hold itself out to the public as a legal entity separate and distinct from the Loan Parties. Notwithstanding the foregoing, this Section 6.18 shall not be deemed to restrict an Equity Pledgor Transaction.

ARTICLE VII.

EVENTS OF DEFAULT

Section 7.01. Events of Default. In case of the happening of any of the following events ("Events of Default"):

(a) any representation or warranty made or deemed made by a Company in any Loan Document, or any representation, warranty, statement or certificate given by a Company in writing in connection with or pursuant to any Loan Document, shall prove to have been false or misleading in any material respect when so made, deemed made or furnished by or on behalf of a Loan Party; provided that, if a representation and warranty contains a materiality or Material Adverse Effect qualification, the materiality qualifier in this Section 7.01(a) shall be disregarded for purposes of such representation and warranty;

(b) default shall be made by a Loan Party in the payment of any principal of any Loan or the reimbursement of any drawing under any Letter of Credit when and as the same shall become due and payable, whether at the due date thereof or at a date fixed for prepayment thereof (whether voluntary or mandatory) or by acceleration thereof or otherwise;

(c) default shall be made by a Company in the payment of any interest on any Loan or any drawing under any Letter of Credit or any Fee or any other amount (other than an amount referred to in clause (b) above) due under any Loan Document, when and as the same shall become due and payable, and such default shall continue unremedied for a period of five (5) days;

(d) default shall be made in the due observance or performance by the Borrower or any other Loan Party of any covenant, condition or agreement contained in Section 5.01(f), Section 5.02, Section 5.05 (to the extent it applies to acquisition or maintenance of insurance), Section 5.07, Section 5.15 or Section 5.18 or in Article VI (subject, in the case of Section 6.08 to the cure rights set forth in Section 7.03);

(e) Intentionally Omitted;

(f) default shall be made in the due observance or performance by any Company of any covenant, condition or agreement contained in any Loan Document (other than those specified in clauses (b), (c), (d) or (e) above) and such default shall continue unremedied for a period of thirty (30) days after the earlier of (i) any officer of a Company becoming aware of such default or (ii) receipt by any Company of written notice from the Administrative Agent or any Lender of such default;

(g) with respect to any Material Indebtedness, (i) any Loan Party shall fail to pay any principal or interest, regardless of amount, due in respect of such Indebtedness, when and as the same shall become due and payable (after the expiration of any related grace or cure periods provided thereunder), or (ii) any other breach or default by any Loan Party occurs with respect to any other term of Material Indebtedness that results in such Indebtedness becoming due prior to its scheduled maturity or that enables or permits (with or without the giving of notice) the holder or holders of such Indebtedness or any trustee or agent on its or their behalf to cause such Indebtedness to become due, or to require the prepayment, repurchase, redemption or defeasance thereof, prior to its scheduled maturity; provided that, upon the cure or waiver of such default (so long as prior to the acceleration of such Indebtedness), the Event of Default hereunder shall no longer exist;

(h) an involuntary proceeding shall be commenced or an involuntary petition shall be filed in a court of competent jurisdiction seeking (i) relief in respect of any Company, or of a substantial part of any Company, under any Debtor Relief Law, (ii) the appointment of a receiver, trustee, custodian, sequestrator, conservator or similar official for any Company or for a substantial part of the Property of any Company or (iii) the winding-up, dissolution, split-up or liquidation of any Company; and such proceeding or petition shall continue for sixty (60) days without having been dismissed, bonded, or discharged, or an order or decree approving or ordering any of the foregoing shall be entered;

(i) any Company shall (i) voluntarily commence any proceeding or file any petition seeking relief under any Debtor Relief Law, (ii) consent to the institution of, or fail to contest in a timely and appropriate manner, any proceeding or the filing of any petition described in clause (h) above, (iii) apply for or consent to the appointment of a receiver, trustee, custodian, sequestrator, conservator or similar official for any Company or for a substantial part of the Property of any Company, (iv) file an answer admitting the material allegations of a petition filed against it in any

such proceeding, (v) make a general assignment for the benefit of creditors, (vi) become unable, admit in writing its inability or fail generally to pay its debts as they become due or (vii) take any action for the purpose of effecting any of the foregoing;

(j) one or more judgments for the payment of money in an aggregate amount in excess of $10,000,000 for all the Loan Parties and the Equity Pledgor (to the extent not paid or adequately covered by insurance as to which the solvent and unaffiliated insurance companies have acknowledged coverage) or other judgments that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect shall be rendered against any Loan Party or the Equity Pledgor, or any combination thereof, and the same shall remain undischarged, unvacated or unbonded for a period of forty-five (45) consecutive days during which execution shall not be effectively stayed, or any action shall be legally taken by a judgment creditor to levy upon assets or properties of any Company to enforce any such judgment;

(k) an ERISA Event shall have occurred that, when taken together with all other such ERISA Events, could reasonably be expected to result in liability of any Loan Party that could reasonably be expected to result in a Material Adverse Effect;

(l) (i) any Guarantee under the Subsidiary Guaranty or the Equity Pledge Agreement for any reason shall cease to be in full force and effect (other than pursuant to its terms) or shall be deemed null and void, (ii) any of the Borrower or the Subsidiary Guarantors shall deny in writing that it has any further liability under the Subsidiary Guaranty, or (iii) the Equity Pledgor shall deny in writing that it has any further liability under the Equity Pledge Agreement (in each case other than as a result of the discharge of such Subsidiary Guarantor, the Equity Pledgor in accordance with the terms of the Loan Documents);

(m) any of the Loan Documents shall cease, for any reason (other than pursuant to the terms thereof), to be in full force and effect or shall be deemed null and void, or any Company party thereto shall so assert in writing or shall assert in writing that any provision of any Loan Document is not in full force and effect (other than pursuant to its terms) or shall otherwise contest the validity or enforceability of any Loan Document in writing;

(n) any Lien purported to be created under any Security Document and extended to assets with a value in the aggregate in excess of $2,000,000 shall cease to be, or shall be asserted in writing by any Company party thereto not to be, a valid and perfected, with the priority required by the Loan Documents (except, in each case, as otherwise provided in this Agreement or such Security Document), Lien on any Collateral covered thereby (or any such Lien shall be deemed to be null and void) other than (x) as a result of the sale or other disposition of the Collateral in a transaction permitted under the Loan Documents to a Person that is not a Loan Party or (y) as a result of the Collateral Agent's failure to maintain possession of any equity certificates or other instruments delivered to it under the Loan Documents;

(o) there shall have occurred a Change in Control;

(p) a License Revocation shall have occurred and continue for seven (7) consecutive Business Days;

(q) there shall have occurred the termination of, or the receipt by any Loan Party of notice of the termination of, or the occurrence of any event or condition which constitutes an event of default by a Loan Party (which has not been cured following any applicable grace period (after giving effect to any standstill or any extension with respect thereto) provided to a Loan Party thereunder) under or permit the termination of the Ground Lease, the Entertainment Village Lease or the Golf Course Lease; or

(r) there shall have occurred an "Event of Default" under (and as defined in) the Term Loan Agreement; provided that, upon the cure or waiver of such default (so long as prior to the acceleration of such Indebtedness), the Event of Default under this clause (r) shall no longer exist.

then, and in every such event (other than an event described in clause (h) or (i) above, in which case such actions shall occur automatically as further set forth below), and at any time thereafter during the continuance of such event either or both of the following actions may be taken: (i) the Administrative Agent may, and at the request of the Required Lenders shall, by notice to the Borrower, terminate forthwith the Commitments (and in the event of any such termination of the Commitments, the obligation of the Issuing Bank to issue any Letter of Credit shall immediately terminate) and (ii) the Administrative Agent may, and at the request of the Required Lenders shall, declare the Loans then outstanding to be forthwith due and payable in whole or in part, whereupon the principal of the Loans so declared to be due and payable, together with accrued interest thereon and any unpaid accrued Fees and all other liabilities of the Loan Parties accrued hereunder and under any other Loan Document, shall become forthwith due and payable, without presentment, demand, protest or any other notice of any kind, all of which are hereby expressly waived by the Borrower, anything contained herein or in any other Loan Document to the contrary notwithstanding; the Administrative Agent shall direct the Borrower to provide (and the Borrower agrees upon receipt of such notice to provide) to Administrative Agent such additional amounts of cash, to be held as security for reimbursement obligations with respect to Letters of Credit then outstanding, equal to the Letter of Credit Obligations at such time; and the Administrative Agent shall have the right (directly or through the Collateral Agent) to take all or any actions and exercise any remedies available to a secured party under the Security Documents (subject to the terms of the Intercreditor Agreement), the other Loan Documents or applicable law or in equity; and in any event described in clause (h) or (i) above, all of the Commitments shall automatically terminate, the obligation of the Issuing Bank to issue any Letter of Credit shall immediately terminate and the principal of the Loans then outstanding, together with accrued interest thereon and any unpaid accrued Fees and all other liabilities of the Loan Parties accrued hereunder and under any other Loan Document, shall automatically become due and payable, without presentment, demand, protest or any other notice of any kind, all of which are hereby expressly waived by the Borrower, anything contained herein or in any other Loan Document to the contrary notwithstanding; the Borrower shall provide to Administrative Agent such additional amounts of cash, to be held as security for reimbursement obligations with respect to Letters of Credit then outstanding, equal to the Letter of Credit Obligations at such time; and the Administrative Agent shall have the right (directly or through the Collateral Agent) to take all or any actions and exercise any remedies available to a secured party under the Security Documents or applicable law or in equity.

Section 7.02. Application of Proceeds. Except as expressly provided elsewhere in the Loan Documents and subject to the provisions of the Intercreditor Agreement, after the exercise of remedies provided for under this Agreement or the other Loan Documents (or after the Loans have become immediately due and payable (whether due to acceleration or otherwise)) any amounts received on account of the Obligations (including all proceeds received by the Administrative Agent in respect of any sale, any collection from, or other realization upon all or any part of the Collateral but excluding the payment of current interest or interest paid as a form of adequate protection in any insolvency or liquidation proceeding) shall be applied in full or in part by the Administrative Agent against the Obligations in the following order of priority:

First, to the payment of that portion of the Obligations constituting Fees, indemnities (other than unasserted contingent indemnification obligations), expenses and other amounts (including fees, charges and disbursements of counsel to the Agents) payable to the Agents in their capacities as such (including all costs and expenses of any sale, collection or other realization upon Collateral or any expenditures in connection with the preservation of Collateral), together with interest on each such amount from and after the date such amount is due, owing or unpaid until paid in full;

Second, to the payment of that portion of the Obligations constituting Fees and indemnities (other than unasserted contingent indemnification obligations) and other amounts, (other than principal and interest) payable to the Lenders and the Issuing Bank, ratably among them in proportion to the respective amounts described in this clause payable to them together with interest on each such amount from and after the date such amount is due, owing or unpaid until paid in full;

Third, to the payment of that portion of the Obligations (including, for the avoidance of doubt, interest which, but for the filing of a petition in bankruptcy with respect to any Company would have accrued on any such Obligation, whether or not a claim is allowed or allowable against any Company for such interest in the related bankruptcy proceeding) constituting accrued and unpaid interest on the Loans and other Obligations under the Loan Documents, ratably among the Lenders in proportion to the respective amounts described in this clause payable to them;

Fourth, to the payment of that portion of the Obligations constituting unpaid principal of the Loans, breakage, termination or other payments under Specified Cash Management Agreements (in an aggregate amount up to $1,000,000 in respect of payments under Specified Cash Management Agreements under this clause Fourth), reimbursement obligations under Letters of Credit and to Cash Collateralize the aggregate undrawn amount of Letters of Credit, ratably among the Lenders, the Specified Cash Management Counterparties and the Issuing Bank in proportion to the respective amounts described in this clause held by them;

Fifth, to the payment of all other Obligations owing under or in respect of the Loan Documents and the Specified Cash Management Agreements that are due and payable to the Administrative Agent and the other Secured Parties on such date, ratably based upon the respective aggregate amounts of all such Obligations owing to the Administrative Agent and the other Secured Parties on such date; and

Last, the balance, if any, after all of the Obligations have been indefeasibly paid in full, to the Borrower or as otherwise required by Requirements of Law.

Subject to Sections 2.04 and 2.23, amounts used to Cash Collateralize the aggregate undrawn amount of Letters of Credit pursuant to clause Fourth above shall thereafter be applied to satisfy drawings under such Letters of Credit as they occur. If any amount remains on deposit as Cash Collateral after all Letters of Credit have either been fully drawn or expired, such remaining amount shall be applied in accordance with this Section 7.02.

For the avoidance of doubt, notwithstanding any other provision of any Loan Document to the contrary, no payment received from the Equity Pledgor or Subsidiary Guarantor that is not a Qualified ECP Guarantor shall be applied by the Administrative Agent or any other Secured Party to the payment of any Excluded Swap Obligations.

Section 7.03. Right to Cure. Notwithstanding anything to the contrary contained in Section 7.01, for purposes of determining whether an Event of Default has occurred under any financial covenant set forth in Section 6.08(a) or Section 6.08(b), any proceeds of cash equity contributions (in the form of common equity or other equity having terms reasonably acceptable to the Administrative Agent) or cash proceeds of Subordinated Indebtedness received by the Borrower from the Sponsor, in each case, after the last day of any Fiscal Quarter and on or prior to the day that is ten (10) days after the day on which financial statements are required to be delivered for that Fiscal Quarter (such date being hereinafter referred to as the "Subject Date") will, at the written request of the Borrower (such request to be made at the time of the Borrower's receipt of such proceeds), be included in the calculation of Consolidated Adjusted EBITDA solely for the purposes of determining compliance with the financial covenants at the end of such Fiscal Quarter and any subsequent period that includes such Fiscal Quarter (any such equity contribution or Subordinated Indebtedness, a "Specified Equity Contribution"); provided that (a) the Borrower shall not be permitted to so request that a Specified Equity Contribution be included in the calculation of Consolidated Adjusted EBITDA with respect to any Fiscal Quarter unless, after giving effect to such requested Specified Equity Contribution, there will be a period of at least two Fiscal Quarters in the Relevant Four Fiscal Quarter Period in which no Specified Equity Contribution has been made (it being understood that this clause (a) shall not apply until the fourth full Fiscal Quarter tested pursuant to the financial covenants set forth in Section 6.08), (b) no more than five (5) Specified Equity Contributions will be made in the aggregate prior to the Scheduled Maturity Date, (c) the amount of any Specified Equity Contribution in any Fiscal Quarter shall not exceed the amount required to cause the Borrower to be in compliance with the financial covenants, (d) all Specified Equity Contributions and the use of proceeds therefrom will be disregarded for all other purposes under the Loan Documents (including calculating Consolidated Adjusted EBITDA for purposes of determining basket levels or carve-outs and other items governed by reference to Consolidated Adjusted EBITDA, and for purposes of Restricted Junior Payment allowances) and (e) to the extent that the proceeds of any Specified Equity Contribution are used to repay Indebtedness, such Indebtedness shall not be deemed to have been repaid for purposes of calculating the Interest Coverage Ratio or the First Lien Leverage Ratio for the applicable Relevant Four Fiscal Quarter Period. For purposes of this paragraph, the term "Relevant Four Fiscal Quarter Period" shall mean, with respect to any requested Specified Equity Contribution, the four Fiscal Quarter

period ending on (and including) the Fiscal Quarter in which Consolidated Adjusted EBITDA will be increased as a result of such Specified Equity Contribution. Notwithstanding anything herein to the contrary, (i) with respect to any Event of Default arising solely under Section 6.08(a) or Section 6.08(b), prior to the Subject Date associated therewith, none of Administrative Agent, Collateral Agent nor any Lender shall exercise any rights or remedies pursuant to Article VII or any other provision of any Loan Document or applicable law solely on the basis of such Event of Default having occurred and being continuing; provided that, for purposes of clarification, the foregoing shall not be deemed to permit the Borrower or any other Loan Party to request Loans or take any other actions during the pendency of any Event of Default arising Section 6.08(a) or Section 6.08(b) that would otherwise be prohibited by the Loan Documents while any Default or Event of Default has occurred and is then continuing, and (ii) if, after giving effect to the foregoing recalculations, the requirements of Section 6.08(a) or Section 6.08(b) shall be satisfied, then the requirements of Section 6.08(a) or Section 6.08(b) shall be deemed satisfied as of the end of the relevant Fiscal Quarter with the same effect as though there had been no failure to comply therewith at such date, and the applicable breach of Section 6.08(a) and/or Section 6.08(b) that had occurred (and any resultant Default or Event of Default) shall be deemed retroactively not to have occurred for the purposes of this Agreement (including for purposes of Section 4.02).

ARTICLE VIII.

AGENTS AND ARRANGER

Section 8.01. Appointment of Agents. Each of the Lenders (including the Issuing Bank) hereby irrevocably appoints (a) Fifth Third Bank, as the Administrative Agent, (b) Fifth Third Bank, as Lead Arranger, (c) Nomura Securities International, Inc., as Lead Arranger, and (d) Fifth Third Bank, as Collateral Agent. Each Agent hereby agrees to act upon the express conditions contained herein and the other Loan Documents, as applicable. The provisions of this Article VIII (other than Section 8.09(a), which shall also be for the benefit of the Borrower) are solely for the benefit of the Agents and the Lenders and no Company shall have any rights as a third party beneficiary of any of the provisions thereof. In performing its functions and duties hereunder, each Agent shall act solely as a representative and on behalf of the Lenders and the other Secured Parties and does not assume and shall not be deemed to have assumed any obligation towards or relationship of agency or trust with or for any Company. It is understood and agreed that the use of the term "agent" herein or in any other Loan Documents (or any other similar term) with reference to an Agent is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any applicable law. Instead such term is used as a matter of market custom, and is intended to create or reflect only an administrative relationship between contracting parties. Each of the Agents, without consent of or notice to any party hereto, may assign any or all of its rights hereunder to any of its Affiliates.

Section 8.02. Powers and Duties. Each Lender irrevocably authorizes each Agent to take such action on such Lender's behalf and to exercise such powers, rights and remedies hereunder and under the other Loan Documents as are specifically delegated or granted to such Agent by the terms hereof and thereof, together with such powers, rights and remedies as are reasonably incidental thereto, including taking any action as a contractual representative of the Lenders. Each Agent shall

have only those duties and responsibilities that are expressly specified herein and the other Loan Documents. Each Agent may exercise such powers, rights and remedies and perform such duties and responsibilities by or through any one or more co-agents, sub-agents or attorneys-in-fact appointed by it. Each Agent and any such co-agent or sub-agent may perform any or all its duties and responsibilities and exercise its rights, powers and remedies by or through their respective Related Parties. Any such co-agent, sub-agent or attorney-in-fact shall be entitled to the benefits of all provisions of this Article VIII and Article IX as though such co-agents, sub-agents or attorneys-in-fact were an Agent. The exculpatory provisions of this Article VIII shall apply to any such co-agent, sub-agent or attorney-in-fact and to the Related Parties of each Agent and any such co-agent, sub-agent or attorney-in-fact, and shall apply to their respective activities in connection with the syndication of the Facility provided for herein as well as their respective activities as an Agent. No Agent shall be responsible for the negligence or misconduct of any co-agents, sub-agents or attorneys-in-fact appointed by it except to the extent that a court of competent jurisdiction determines in a final and non-appealable judgment that such Agent acted with gross negligence or willful misconduct in the selection of such co-agent, sub-agent or attorney-in-fact. No Agent shall have, by reason hereof or any of the other Loan Documents, a fiduciary or trustee relationship with, or any other implied duties in respect of, any other Secured Party; and nothing herein or any of the other Loan Documents, expressed or implied, is intended to or shall be so construed as to impose upon any Agent any duties or obligations in respect hereof or any of the other Loan Documents except as expressly set forth herein or therein, and its duties and obligations hereunder shall be administrative in nature. The Administrative Agent and the Collateral Agent are further authorized by the Lenders to enter into amendments and agreements supplemental to this Agreement or any other Loan Document for the purpose of curing any defect, inconsistency, omission or ambiguity in this Agreement or any other Loan Document to which the Administrative Agent or the Collateral Agent is a party or to effect administrative changes that are not adverse to any Lender (in each case without any consent or approval by the Lenders).

Section 8.03. General Immunity.

(a) No Responsibility for Certain Matters. None of the Agents or the Lead Arranger shall be responsible to any other Agent or Lead Arranger or any Lender, or be required to ascertain or inquire as to, (i) any statement, recital, warranty or representation (in each case whether written or oral) made in or in connection with any Loan Document, (ii) the contents of any certificate, report or other document (including financial statements) delivered thereunder or in connection therewith, (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth in any Loan Document, (iv) the execution, validity, enforceability, effectiveness, genuineness, sufficiency or collectability of any Loan Document or any other agreement, instrument or document, or the creation, perfection or priority of any Lien purported to be created by the Security Documents, (v) the value or sufficiency of any Collateral, (vi) the use of proceeds of the Loans or the use of any Letter of Credit, (vii) the existence or possible existence of any Default or Event of Default, (viii) the financial condition or business affairs of any Company or any other Person liable for the payment of any Obligations or (ix) the satisfaction of any condition set forth in Article IV or elsewhere in any Loan Document, other than to confirm receipt of items expressly required to be delivered to such Agent or Lead Arranger, or, in each such case, to make any disclosures with respect to the foregoing to the extent expressly required by the terms of the Loan Documents.

Except as expressly set forth in the Loan Documents, none of the Agents or the Lead Arranger shall have any duty to disclose, nor shall it be liable for the failure to disclose, any information relating to any Sponsor, any Company or any Unrestricted Subsidiary that is communicated to or obtained by it or any of its Affiliates in any capacity. Anything contained herein to the contrary notwithstanding, the Administrative Agent shall not have any liability arising from confirmations of the amount of outstanding Loans or the Letter of Credit Obligations or the component amounts thereof.

(b) Exculpatory Provisions. None of the Agents, the Lead Arranger or any of their respective Related Parties shall be liable to the other Agents, Lead Arranger, any Lender or any other Person for any action taken or not taken by it (i) with the consent or at the request of the Required Lenders (or such other number or percentage of the Lenders as shall be necessary, or as such Agent, Lead Arranger, or Related Party shall believe in good faith shall be necessary, under the circumstances as provided in Sections 9.08 and 7.01) or (ii) unless taking or not taking such action constituted gross negligence or willful misconduct, as determined by a court of competent jurisdiction by a final and nonappealable judgment. Each Agent shall be entitled to refrain from any act or the taking of any action (including the failure to take an action) in connection herewith or any of the other Loan Documents or from the exercise of any right, power, discretion or authority vested in it hereunder or thereunder unless and until such Agent shall have received written instructions in respect thereof from the Required Lenders (or such other number or percentage of Lenders as expressly provided for herein or in the other Loan Documents) and, upon receipt of such instructions from the Required Lenders (or such other Lenders, as the case may be), such Agent shall be entitled to act or (where so instructed) refrain from acting, or to exercise such power, discretion or authority, in accordance with such instructions; provided that no Agent shall be required to take any action that, in its opinion or the opinion of its counsel, may expose such Agent to liability or that is contrary to any Loan Document or applicable law, including for the avoidance of doubt, any action that may be in violation of the automatic stay under any Debtor Relief Law or that may affect a forfeiture, modification or termination of property of a Defaulting Lender in violation of any Debtor Relief Law. Without prejudice to the generality of the foregoing, (i) each of the Agents and the Lead Arranger shall be entitled to rely, and shall be fully protected, and shall not incur any liability, in relying, upon any notice, request, certificate, consent, communication, instrument, document or other writing (including any electronic message, Internet or intranet website posting or other distribution) believed by it to be genuine and to have been signed, sent or otherwise authenticated by the proper Person or Persons, and shall be entitled to rely and shall be fully protected, and shall not incur any liability, in relying on, and taking or not taking any actions in accordance with, opinions and judgments of attorneys (who may be attorneys for any of the Companies), accountants, experts and other professional advisors selected by it; and (ii) no Lender shall have any right of action whatsoever against any Agent as a result of such Agent acting or (where so instructed) refraining from acting hereunder or under any of the other Loan Documents in accordance with the instructions of the Required Lenders (or such other Lenders as may be expressly provided for herein or in the other Loan Documents). Each of the Agents and the Lead Arranger also may rely upon any statement made to it orally or by telephone and believed by it to have been made by the proper Person, and shall not incur any liability for relying thereon. In determining compliance with any condition hereunder to the making of a Loan or other Credit Extension, or the issuance, extension, renewal or increase of a Letter of Credit, that by its terms must be fulfilled to the

satisfaction of a Lender or the Issuing Bank, each of the Agents and the Lead Arranger may presume that such condition is satisfactory to such Lender or the Issuing Bank unless such Agent or Lead Arranger shall have received written notice to the contrary from such Lender or the Issuing Bank prior to the making of such Loan or other Credit Extension or the issuance of any such Letter of Credit.

Section 8.04. **Notice of Default**. None of the Agents or the Lead Arranger shall be deemed to have knowledge or notice of the occurrence of any Default or Event of Default hereunder unless such Agent or the Lead Arranger has received written notice from a Lender or the Borrower referring to this Agreement, describing such Default or Event of Default and stating that such notice is a "notice of default". In the event that the Administrative Agent receives such a notice, the Administrative Agent shall give notice thereof to the Lenders. The Administrative Agent shall take such action with respect to such Default or Event of Default as shall be reasonably directed by the Required Lenders (or such other Lenders as may be required to give such direction pursuant to the terms of this Agreement); provided, that unless and until the Administrative Agent shall have received such directions, the Administrative Agent may (but shall not be obligated to) take such action, or refrain from taking such action, with respect to such Default or Event of Default as it shall deem advisable in the best interests of the Lenders.

Section 8.05. **Agents and Arranger Entitled to Act as Lenders**. Being an Agent or the Lead Arranger, or an Affiliate of an Agent or the Lead Arranger, shall in no way impair or affect any of the rights and powers of, or impose any duties or obligations upon, such Agent or the Lead Arranger or such Affiliate, in its individual capacity as a Lender hereunder. With respect to its participation in the Loans and the Letters of Credit, each of the Agents and the Lead Arranger and the Affiliates of the Agents and the Lead Arranger shall have the same rights and powers hereunder as any other Lender and may exercise the same as if it were not performing the duties and functions delegated to it hereunder, and the term "Lender" shall, unless the context clearly otherwise indicates, include each of the Agents and the Lead Arranger, as the case may be, in its individual capacity. Any Agent or the Lead Arranger or any Affiliate of an Agent or the Lead Arranger may accept deposits from, lend money to, own securities of, and generally engage in any kind of banking, trust, financial advisory or other business with the Sponsors, the Companies or any of their respective Affiliates as if it (or its Affiliate) were not performing the duties specified herein, and may accept fees and other consideration from the Sponsors, the Companies or any of their respective Affiliates for services in connection herewith and otherwise without having to account for the same to the Lenders. In addition, the Lenders (i) understand and acknowledge that any Agent and/or its Affiliates have and may in the future enter into business relationships and transactions with the Sponsor and/or Sponsor's Affiliates (including as an investor in funds of the Sponsor and/or its Affiliates) and (ii) waive any conflict resulting therefrom and the result of any decisions made or actions taken or not taken by any Agent or its Affiliates that may in any manner be influenced by such business relationships or transactions.

Section 8.06. **Lenders' Representations, Warranties and Acknowledgement**.

(a) Each of the Lenders and the Issuing Bank expressly acknowledges and agrees that none of the Agents, the Lead Arranger or any of their respective officers, directors, employees,

agents, counsel, attorneys in fact or other affiliates has made any representations or warranties to such Lender or the Issuing Bank and that no act by any of the Agents or the Lead Arranger hereafter taken, including any review of the affairs of any Sponsor, any Company or any of their respective Affiliates, shall be deemed to constitute a representation or warranty by such Agent or the Lead Arranger or the Issuing Bank to any Lender. Each of the Lenders and the Issuing Bank acknowledges that it has, independently and without reliance upon any Agent, the Lead Arranger, any other Lender or counsel to the Lead Arranger or any Agent, or any of their respective officers, directors, employees, agents, other Related Parties or counsel, and based on the financial statements of any Sponsor, any Company or any of their respective Affiliates, and inquiries of such Persons, its independent due diligence of the business and affairs of the Sponsors and the Companies and other Persons, its review of the Loan Documents, the legal opinions required to be delivered to it hereunder, the advice of its own counsel and such other documents and information as it has deemed appropriate, made its own credit and legal analysis and decision to enter into this Agreement and the transactions contemplated hereby. Each of the Lenders and the Issuing Bank also acknowledges that it will, independently and without reliance upon any Agent, the Lead Arranger, any other Lender or counsel to the Lead Arranger, or any Agent or any of their respective officers, directors, employees, other Related Parties and agents, and based on such review, advice, documents and information as it shall deem appropriate at the time, continue to make its own decisions in taking or not taking action under the Loan Documents. None of the Agents or the Lead Arranger shall be required to keep itself informed as to the performance or observance by any Sponsor or any Company of the Loan Documents or any other document referred to or provided for therein or to inspect the properties or books of, or make any other investigation of, any Sponsor or any Company. Except for notices, reports and other documents and information expressly required to be furnished to the Lenders and the Issuing Bank by the Administrative Agent under this Agreement or any of the other Loan Documents, none of the Agents or the Lead Arranger shall have any duty or responsibility to provide any Lender or the Issuing Bank with any credit or other information concerning the business, operations, property, financial and other condition or creditworthiness of any Sponsor or any Company or Affiliate thereof which may come into possession of any Agent, the Lead Arranger or any of their respective officers, directors, employees, agents, attorneys in fact or other Affiliates. None of the Agents or Lead Arranger shall have any responsibility with respect to the accuracy of or the completeness of any information provided to the Lenders. Each of the Lenders and the Issuing Bank acknowledges that the Lead Arranger's and the Administrative Agent's legal counsel in connection with the transactions contemplated by this Agreement is only acting as counsel to the Lead Arranger and the Administrative Agent and is not acting as counsel to any Lender or the Issuing Bank.

(b) In determining compliance with any condition hereunder to the making of a Loan on the Closing Date that by its terms must be fulfilled to the satisfaction of a Lender, the Administrative Agent may presume that such condition is satisfactory to such Lender upon delivery by such Lender of its signature page to a Lender Addendum, and each such Lender shall be deemed to have acknowledged receipt of, and consented to and approved, each Loan Document and each other document required to be approved by any Agent or the Required Lenders (or such other Lenders as may be required to give such approvals), as applicable, on the date of delivery of such signature page.

Section 8.07. **Right to Indemnity**. Each Lender, in proportion to its Pro Rata Share, severally agrees to indemnify each Agent and the Lead Arranger, to the extent that such Agent or the Lead Arranger shall not have been reimbursed by any Company, for and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses (including reasonable counsel fees and disbursements) or disbursements of any kind or nature whatsoever which may be imposed on, incurred by or asserted against such Agent or Lead Arranger in exercising its powers, rights and remedies or performing its duties and responsibilities hereunder or under the other Loan Documents or otherwise in its capacity as such Agent or Lead Arranger in any way relating to or arising out of this Agreement or the other Loan Documents; provided, subject to Section 8.03(b)(ii), no Lender shall be liable for any portion of such liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements that are found by a final and nonappealable decision of a court of competent jurisdiction to have resulted solely from such Agent's or the Lead Arranger's gross negligence or willful misconduct. If any indemnity furnished to any Agent or Lead Arranger for any purpose shall, in the opinion of such Agent or Lead Arranger, be insufficient or become impaired, such Agent or Lead Arranger may call for additional indemnity or advance of funds and cease, or not commence, to do the acts indemnified against until such additional indemnity or advance of funds is furnished; provided, in no event shall this sentence require any Lender to indemnify any Agent or Lead Arranger against any liability, obligation, loss, damage, penalty, action, judgment, suit, cost, expense or disbursement in excess of such Lender's Pro Rata Share thereof; and provided, further, subject to Section 8.03(b)(ii), this sentence shall not be deemed to require any Lender to indemnify any Agent or the Lead Arranger against any liability, obligation, loss, damage, penalty, action, judgment, suit, cost, expense or disbursement that is found by a final and nonappealable decision of a court of competent jurisdiction to have resulted solely from such Agent's or Lead Arranger's gross negligence or willful misconduct.

Section 8.08. **Successor Agents**. Any Agent may resign at any time by giving thirty (30) days' prior written notice thereof to the Lenders, the Borrower and any other Agent. Upon any such notice of resignation, the Required Lenders shall have the right, upon five (5) Business Days' notice to the Borrower, to appoint a successor for such resigning Agent; provided that if no such successor(s) shall have been so appointed by the Required Lenders and accepted such appointment within thirty (30) days after the resigning Agent gives notice of its resignation, then the resigning Agent may on behalf of the Lenders appoint a successor for such resigning Agent. Whether or not a successor has been appointed, such resignation shall become effective thirty (30) days after the resigning Agent has given notice of its resignation. Upon the acceptance of any appointment as the applicable Agent hereunder by an applicable successor, such successor shall thereupon succeed to and become vested with all the rights, powers, privileges and duties of the such Agent and the retiring Agent shall promptly (i) to the extent in its possession, transfer to such successor all sums, Capital Stock and other items of Collateral held under the Security Documents, together with all records and other documents necessary or appropriate in connection with the performance of the duties of the applicable successor Agent under the Loan Documents, and (ii) execute and deliver to such successor such amendments to financing statements, and take such other actions, as may be necessary or appropriate in connection with the assignment to such successor of the security interests created under the Security Documents, whereupon such retiring Agent shall be discharged from its duties and obligations hereunder and under the other Loan Documents (except that in the case of any collateral security held by such Agent on behalf of the Lenders or the Issuing Bank

under any of the Loan Documents, the retiring Agent shall continue to hold such collateral security until such time as a successor Agent is appointed) and (y) except for any fee, expense or indemnity payments owed to the retiring Agent, all payments, communications and determinations provided to be made by, to or through such Agent shall instead be made by or to each Lender and the Issuing Bank directly, until such time, if any, as the Required Lenders or the retiring Agent appoint a successor Agent as provided for above. The fees payable by the Borrower to a successor Agent shall be the same as those payable to its predecessor unless otherwise agreed between the Borrower and such successor. After any retiring Agent's resignation hereunder as such Agent the provisions of this Article VIII and Section 9.05 shall inure to its benefit, as well as to the benefit of its sub-agents and their respective Related Parties, as to any actions taken or omitted to be taken by it while it was such Agent hereunder. In the event any Agent, by any final determination by a Gaming Authority pursuant to applicable Gaming Laws (x) has been determined as "unsuitable" or "disqualified" to act in its capacity under the Loan Documents as such Agent or (y) has been denied the issuance of any license or other approval required under applicable Gaming Laws to be held by it as such Agent, such Agent shall resign in accordance with this Section 8.08.

Any successor Administrative Agent (or if there is no successor, one of the Lenders appointed by the Required Lenders that accepts such appointment) shall also simultaneously replace the then existing Administrative Agent and the then existing Administrative Agent shall be fully released as "Issuing Bank" hereunder pursuant to documentation in form and substance reasonably satisfactory to the then existing Administrative Agent, and any successor Administrative Agent appointed pursuant to this Section 8.08 shall, upon its acceptance of such appointment, become the successor "Issuing Bank" for all purposes hereunder.

Section 8.09. Loan Documents.

(a) Agents under Loan Documents. Each Lender hereby further authorizes the Administrative Agent (or, if applicable, the Collateral Agent) on behalf of and for the benefit of the Secured Parties, to be the representative of the Secured Parties with respect to the Subsidiary Guaranty, the Collateral, each of the Security Documents and each of the other Loan Documents. Without further written consent or authorization from the Lenders or any other Secured Parties, the Administrative Agent or the Collateral Agent may (and at the written request and expense of the Borrower, shall) execute any documents or instruments necessary to (i) release any Lien encumbering any item of Collateral that is the subject of a sale or other disposition of assets permitted under this Agreement or the other Loan Documents or to which the Required Lenders (or such other Lenders as may be required to give such consent under Section 9.08) have otherwise consented or which constitutes Excluded Collateral (or otherwise subordinate any Lien to any Senior Permitted Lien of the types described in Section 6.02(d), (e), (g), (j), (m), (u), (v) or (cc), (ii) release any Subsidiary Guarantor from the Pledge and Security Agreement in accordance with the terms thereof or from the Subsidiary Guaranty in accordance with the terms thereof or with respect to which the Required Lenders (or such other Lenders as may be required to give such consent under Section 9.08) have otherwise consented, or (iii) release the Equity Pledgor from the Equity Pledge Agreement to which the Equity Pledgor is a party in connection with an Equity Pledgor Transaction. Additionally, the Lenders irrevocably authorize the Administrative Agent or the Collateral Agent to release any Lien on any property granted to or held by the Collateral Agent in their behalf under

any Loan Document and to release any Subsidiary Guarantor from its obligations under the Subsidiary Guaranty upon termination of all Commitments and payment in full of all Obligations (other than obligations under Specified Cash Management Agreements for which acceptable alternative arrangements have been made with, and agreed to by, the applicable Specified Cash Management Counterparties). In the event that any Loan Party incurs any Indebtedness under an FF&E Agreement (as defined in the Term Loan Agreement) in respect of any assets owned by any Loan Party prior to the incurrence of such Indebtedness, and such assets are to become Specified FF&E Collateral (as defined in the Term Loan Agreement) under such FF&E Agreement (as defined in the Term Loan Agreement), any Liens created by any Loan Document in respect of such assets shall be automatically released upon the incurrence of such Indebtedness and the Administrative Agent and the Collateral Agent shall promptly (and the Lenders hereby authorize the Administrative Agent and the Collateral Agent to) take such action and execute any such documents as may be reasonably requested by the Borrower and at the Borrower's expense in connection with the release of any Liens created by a Loan Document in respect of such assets. Upon request by the Administrative Agent at any time, the Required Lenders will confirm in writing the Collateral Agent's authority to release its interest in particular types or items of property, or the Administrative Agent's authority to release any Subsidiary Guarantor from its obligations under the Guaranty pursuant to this Section 8.09. No Agent shall be responsible for or have a duty to ascertain or inquire into any representation or warranty regarding the existence, value or collectability of the Collateral, the existence, priority or perfection of the Collateral Agent's Lien thereon, or any certificate prepared by any Company in connection therewith, nor shall any Agent be responsible or liable to the Lenders for any failure to monitor or maintain any portion of the Collateral.

(b) Right to Enforce Loan Documents and Realize on Collateral. Notwithstanding anything to the contrary contained herein or in any other Loan Document, the authority to enforce rights and remedies hereunder and under the other Loan Documents against the Companies or any of them shall be vested exclusively in, and all actions and proceedings at law in connection with such enforcement shall be instituted and maintained exclusively by, the Administrative Agent or the Collateral Agent or as the Required Lenders may require or otherwise direct, for the benefit of all the Lenders or the Secured Parties, as applicable; provided, however, that the foregoing shall not prohibit (i) any Agent from exercising on its own behalf the rights and remedies that inure to its benefit (solely in its capacity as an Agent) hereunder and under the other Loan Documents, (ii) the Issuing Bank from exercising the rights and remedies that inure to its benefit (solely in its capacity as Issuing Bank) hereunder and under the other Loan Documents, (iii) any Lender from exercising setoff rights in accordance with, and subject to, the terms of this Agreement, or (iv) any Lender from filing proofs of claim on its own behalf during the pendency of a proceeding relative to any Company under any Debtor Relief Law. In furtherance of the foregoing, (x) no Secured Party (other than the Collateral Agent) shall have any right individually to realize upon any of the Collateral and (y) in the event of a foreclosure or similar enforcement actions by the Collateral Agent on any of the Collateral pursuant to a public or private sale or other disposition, any Lender may be the purchaser of any or all of such Collateral at any such sale but only the Collateral Agent, as representative of the Secured Parties (and not any Lender or Lenders in its or their respective individual capacities unless the Required Lenders shall otherwise agree in writing) shall be entitled, for the purpose of bidding and making settlement or payment of the purchase price for all or any portion of the Collateral sold at any such public sale, to use and apply any of the Obligations as a

credit on account of the purchase price for any Collateral payable by the Collateral Agent at such sale or other disposition.

Section 8.10. No Liability. Notwithstanding anything to the contrary contained in this Agreement or any other Loan Document, the Lead Arranger, in its capacity as such, shall not have any duties or responsibilities or incur any liability, under this Agreement or any other Loan Document; provided, that the Lead Arranger shall be a third party beneficiary to, and entitled to all benefits, of this Article VIII and Section 9.05 and entitled to enforce the same as a third party beneficiary, as if a direct party hereto. Notwithstanding anything to the contrary contained in this Agreement, the Collateral Agent, in its capacity as such, shall not have any duties or responsibilities and shall not incur any liability, under this Agreement (for purposes of clarification, it being understood that the foregoing shall not limit the duties, responsibilities or liabilities of the Collateral Agent under any other Loan Document or agreement to which it may be a party); provided, that the Collateral Agent shall be a third party beneficiary to, and entitled to all benefits, of this Article VIII and Section 9.05 and entitled to enforce the same as a third party beneficiary, as if a direct party hereto.

Section 8.11. Withholdings. To the extent required by any applicable law, the Administrative Agent may withhold from any payment to any Lender an amount equivalent to any applicable withholding tax. If the forms or other documentation required by Section 2.19 are not delivered to the Administrative Agent, then the Administrative Agent may withhold from any payment to any Lender not providing such forms or other documentation, an amount equivalent to the applicable withholding tax. If the IRS or any other Governmental Authority asserts a claim that the Administrative Agent did not properly withhold tax from amounts paid to or for the account of any Lender because the appropriate form was not delivered or was not properly executed or because such Lender failed to notify the Administrative Agent of a change in circumstance which rendered the exemption from, or reduction of, withholding tax ineffective or for any other reason, such Lender shall indemnify the Administrative Agent fully for all amounts paid, directly or indirectly, by the Administrative Agent as tax or otherwise, including any penalties or interest and together with all expenses (including legal expenses, allocated internal costs and out-of-pocket expenses) incurred. Each Lender hereby authorizes the Administrative Agent to set off and apply any and all amounts at any time owing to such Lender under any Loan Document or otherwise payable by the Administrative Agent to the Lender from any other source against any amount due to the Administrative Agent under this Section 8.11. The provisions of this Section 8.11 shall survive the resignation or replacement of the Administrative Agent or any assignment of rights by, or the replacement of, any Lender, the termination of the Commitments and the repayment, satisfaction or discharge of all obligations under any Loan Document.

Section 8.12. Specified Cash Management Agreement. No Specified Cash Management Counterparty that obtains the benefits of Section 7.02 or any Collateral by virtue of the provisions hereof or of any Security Document shall have any right to notice of any action or to consent to, direct or object to any action hereunder or under any other Loan Document or otherwise in respect of the Collateral (including the release or impairment of any Collateral) other than in its capacity as a Lender and, in such case, only to the extent expressly provided in the Loan Documents. Notwithstanding any other provision herein to the contrary, the Administrative Agent shall not be

required to verify the payment of, or that other satisfactory arrangements have been made with respect to, Specified Cash Management Agreements, and Obligations arising under Specified Cash Management Agreements shall be excluded from the application of Section 7.02 unless, in each case the Administrative Agent has received written notice of such Specified Cash Management Agreements, together with such supporting documentation as the Administrative Agent may request, from the Borrower or the applicable Specified Cash Management Counterparty.

ARTICLE IX.

MISCELLANEOUS

Section 9.01. Notices.

(a) Notices Generally. All notices, requests and demands to or upon the respective parties hereto to be effective shall be in writing (which may be by facsimile), and, unless otherwise expressly provided herein (including as provided in paragraph (b) below), shall be deemed to have been duly given or made when delivered, or three (3) Business Days after being deposited in the mail, postage prepaid, or, in the case of facsimile notice, when received, addressed (a) in the case of the Borrower (or any other Loan Party), the Administrative Agent, the Issuing Bank and the other parties below, as follows and (b) in the case of the Lenders, as set forth in the Lender Addendum to which such Lender is a party or, in the case of a Lender which becomes a party to this Agreement pursuant to an Assignment and Acceptance, in such Assignment and Acceptance or (c) in the case of any other Person, to such other address as such Person may hereafter give notice to the other parties hereto:

Borrower and the other Loan Parties:	Montreign Operating Company, LLC 204 State Route 17b Monticello, New York 12701 Attention: Chief Executive Officer Facsimile: (845) 807-0000
with a copy to (for informational purposes only and not constituting notice):	Paul, Weiss, Rifkind, Wharton & Garrison LLP 1285 Avenue of the Americas New York, New York 10019-6064 Attention: Harris B. Freidus Facsimile: (212) 492-0064 Telephone: (212) 373-3064
Fifth Third Bank as Administrative Agent:	Fifth Third Bank Fifth Third Center 38 Fountain Square Plaza Cincinnati, Ohio 45263 Attention: Loan Syndications/Judy Huls Facsimile: (513) 534-0875 Telephone: (513) 534-4224 Email: judy.huls@53.com

with a copy to:	Latham & Watkins LLP 12670 High Bluff Drive San Diego, CA 92130 Attention: Brett Rosenblatt, Esq. Facsimile: 858-523-5450 Telephone: 858-523-5400
Fifth Third Bank as Collateral Agent:	Fifth Third Bank Fifth Third Center 38 Fountain Square Plaza Cincinnati, Ohio 45263 Attention: Loan Syndications/Judy Huls Facsimile: (513) 534-0875 Telephone: (513) 534-4224 Email: judy.huls@53.com
with a copy to:	Latham & Watkins LLP 12670 High Bluff Drive San Diego, CA 92130 Attention: Brett Rosenblatt, Esq. Facsimile: 858-523-5450 Telephone: 858-523-5400
Fifth Third Bank as Issuing Bank:	Fifth Third Bank Fifth Third Center 38 Fountain Square Plaza Cincinnati, Ohio 45263 Attention: Loan Syndications/Judy Huls Facsimile: (513) 534-0875 Telephone: (513) 534-4224 Email: judy.huls@53.com

(b) Electronic Communications. Notices and other communications to the Lenders hereunder may be delivered or furnished by electronic communication (including e-mail and Internet or intranet websites) pursuant to procedures approved by the Administrative Agent; provided that the foregoing shall not apply to notices to any Lender pursuant to Article II if such Lender has notified the Administrative Agent in writing that it is incapable of receiving notices under such Article by electronic communication. The Administrative Agent or the Borrower may, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it; provided that approval of such procedures may be limited to particular notices or communications. Unless the Administrative Agent otherwise prescribes, (i) notices and other communications sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgement); provided that if such notice or other communication is not sent during the normal business hours of the recipient, such notice or communication shall be deemed to have been sent at the opening of business on the next business day for the recipient, and (ii) notices or communications posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient at

its e-mail address as described in the foregoing clause (i) of notification that such notice or communication is available and identifying the website address therefor.

(c) The Platform.

(i) The Borrower hereby acknowledges that (A) the Lead Arranger or the Administrative Agent will make available to the Lenders materials and/or information provided by or on behalf of the Companies hereunder and under the other Loan Documents (collectively, the "Borrower Materials") by posting the Borrower Materials on SyndTrak Online or another similar electronic platform (the "Platform") and (B) certain of the Lenders may be "public-side" Lenders (i.e., Lenders that wish to receive information only of a type that would be publicly available with respect to the Companies or their securities if the Companies were public reporting companies) (each, a "Public Lender"). The Borrower hereby agrees that (W) all Borrower Materials that are to be made available to Public Lenders shall be clearly and conspicuously marked "PUBLIC" which, at a minimum, shall mean that the word "PUBLIC" shall appear prominently on the first page thereof; (X) by marking Borrower Materials "PUBLIC," the Borrower shall be deemed to have authorized the Administrative Agent and the Lenders to treat such Borrower Materials as containing only information of a type that would be publicly available with respect to the Companies or their securities if the Companies were public reporting companies for purposes of United States federal and state securities laws (provided, however, to the extent that such Borrower Materials constitute Information (as defined in Section 9.16), they shall be treated as set forth in Section 9.16); (Y) all Borrower Materials marked "PUBLIC" are permitted to be made available through a portion of the Platform designated as "Public Investor;" and (Z) the Administrative Agent shall be entitled to treat any Borrower Materials that are not marked "PUBLIC" as being suitable only for posting on a portion of the Platform not marked as "Public Investor." Notwithstanding the foregoing, the Loan Documents shall be deemed marked "PUBLIC" and notifications of changes in the terms of the Facility shall be deemed marked "PUBLIC", unless the Borrower notifies the Administrative Agent promptly that any such document contains material non-public information of a type that would not be publicly available with respect to the Companies or their securities if the Companies were public reporting companies. In addition, the Borrower hereby acknowledges and agrees that all financial statements and certificates furnished pursuant to Section 5.01(b), Section 5.01(c) and Section 5.01(d) shall be deemed marked "PUBLIC" unless any such financial statements or certificates contains material non-public information.

(ii) The Platform is provided "as is" and "as available." The Agent Parties (as defined below) do not warrant the accuracy or completeness of the Borrower Materials or the adequacy of the Platform and expressly disclaim liability for errors in, or omissions from, the Borrower Materials. No warranty of any kind, express, implied or statutory, including any warranty of merchantability, fitness for a particular purpose, non-infringement of third party rights or freedom from viruses or other code defects, is made by any Agent party in connection with the Borrower Materials or the Platform. In no event shall the Administrative Agent or any of its Related Parties (collectively, the "Agent Parties") have any liability to the Companies, any Lender, any other Agent or any other Person for losses, claims, damages,

liabilities or expenses of any kind (whether in tort, contract or otherwise) arising out of any Company's or the Administrative Agent's transmission of Borrower Materials through the Internet, except to the extent that such losses, claims, damages, liabilities or expenses are determined by a court of competent jurisdiction by a final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of such Agent Party; provided, however, that in no event shall any Agent Party have any liability to any Company, any Lender, any Agent, the Lead Arranger or any other Person for indirect, special, incidental, consequential or punitive damages (as opposed to direct or actual damages).

(d) Change of Address, Etc. Each of the parties hereto may change its address, telephone or facsimile number for notices and other communications hereunder by notice to the other parties hereto. In addition, each Lender agrees to notify the Administrative Agent from time to time to ensure that the Administrative Agent has on record (i) an effective address, contact name, telephone number, facsimile number and electronic mail address to which notices and other communications may be sent and (ii) accurate wire instructions for such Lender.

(e) Reliance by Agents and Lenders. The Agents, the Lead Arranger and the Lenders shall be entitled to rely and act upon any notices (including telephonic notices) purportedly given by or on behalf of any Company even if (i) such notices were not made in a manner specified herein, were incomplete or were not preceded or followed by any other form of notice specified herein, or (ii) the terms thereof, as understood by the recipient, varied from any confirmation thereof. The Borrower shall indemnify the Agents, the Lead Arranger, the Lenders and the Related Parties of each of them from all losses, costs, expenses and liabilities resulting from the reliance by such Person on each notice purportedly given by or on behalf of any Company. All telephonic notices to and other telephonic communications with the Administrative Agent may be recorded by the Administrative Agent, and each of the parties hereto hereby consents to such recording.

Section 9.02. Survival of Agreement. All covenants, agreements, representations and warranties made by any Company herein or in the documents, certificates or other instruments prepared or delivered in connection with or pursuant to this Agreement or in any other Loan Document shall be considered to have been relied upon by the Lenders and the Issuing Bank and shall survive the making of the Loans by the Lenders and the issuance of Letters of Credit by the Issuing Bank, regardless of any investigation made by the Lenders or the Issuing Bank or on their behalf, and shall continue in full force and effect until the Obligations have been paid in full and the Commitments have been terminated. The agreements of the Loan Parties set forth in Section 2.17(c), Section 2.18, Section 2.19, Section 9.05 and Section 9.06 and the agreements of the Lenders set forth in Section 2.16, Section 8.03(b) and Section 8.07 shall remain operative and in full force and effect regardless of the expiration of the term of this Agreement, the consummation of the transactions contemplated hereby, the repayment of any of the Loans, the expiration of the Commitments, the expiration of any Letter of Credit, the invalidity or unenforceability of any term or provision of this Agreement or any other Loan Document or any investigation made by or on behalf of any Agent, Lead Arranger or Lender.

Section 9.03. Binding Effect. This Agreement shall become effective when it shall have been executed by each of the parties hereto and when the Administrative Agent shall have received

counterparts hereof which, when taken together, bear the signatures of each of the other parties hereto.

Section 9.04. Successors and Assigns.

(a) Whenever in this Agreement any of the parties hereto, the Agents, the Lead Arranger or any Company is referred to, such reference shall be deemed to include the permitted successors and assigns of such Person; and all covenants, promises and agreements by or on behalf of the Companies, the Administrative Agent, the Collateral Agent or the Lenders that are contained in this Agreement or the other Loan Documents shall bind and inure to the benefit of their respective successors and assigns.

(b) Subject to the restrictions contained in the definition of "Eligible Assignee" and this clause (b) (including the last sentence hereof), any Lender may, without the consent of or notice to the Borrower or any other Person, in accordance with applicable law, at any time and from time to time sell to one or more Eligible Assignees (each, a "Participant") participating interests in any Loan owing to such Lender, any Commitment of such Lender or any other interest of such Lender hereunder and under the other Loan Documents. In the event of any such sale by a Lender of a participating interest to a Participant, such Lender's obligations under this Agreement shall remain unchanged, such Lender shall remain solely responsible for the performance thereof, such Lender shall remain the holder of any such Loan for all purposes under this Agreement and the other Loan Documents, and the Borrower, the Lead Arranger and the Agents shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement and the other Loan Documents. In no event shall any Participant under any such participation have any right to approve any amendment or waiver of any provision of any Loan Document, or any consent to any departure by any Company therefrom, except to the extent that such amendment, waiver or consent would increase the amount of any Commitment or extend the period of any Commitment, reduce the principal of, or interest on, the Loans or any Fees payable hereunder, postpone the date of any scheduled amortization payments or the final maturity of the Loans, result in the release of all or substantially all of the Collateral (except to the extent such release is contemplated under, and in accordance with, this Agreement or the other Loan Documents) or the release of all or substantially all of the Guarantee obligations of the Subsidiary Guarantors under the Subsidiary Guaranty (except to the extent such release is contemplated under, and in accordance with, this Agreement or the other Loan Documents), in each case to the extent subject to such participation. The Borrower agrees that if amounts outstanding under this Agreement and the Loans are due or unpaid, or shall have been declared or shall have become due and payable upon the occurrence and continuance of an Event of Default, each Participant shall, to the maximum extent permitted by applicable law, be deemed to have the right of setoff in respect of its participating interest in amounts owing under this Agreement and the Loans to the same extent as if the amount of its participating interest were owing directly to it as a Lender under this Agreement (including pursuant to Section 9.06), provided that, in purchasing such participating interest, such Participant shall be deemed to have agreed to share with the Lenders the proceeds thereof as provided in Section 2.16 as fully as if it were a Lender hereunder. The Borrower also agrees that each Participant shall be entitled to the benefits of Section 2.17(c), Section 2.18 and Section 2.19 with respect to its participation in the Commitments and the Loans outstanding from time to time as if it was a Lender;

provided that, in the case of Section 2.18 and Section 2.19, such Participant is in compliance with the requirements of said Section to the same extent as if it were a Lender and acquired its interest by assignment (it being understood that the documentation required under Section 2.19 shall be delivered to the participating Lender) pursuant to Section 9.01(c) at the time such Participant directly requests the benefits of Section 2.18 and Section 2.19 and provided, further, that such Participant (A) agrees to be subject to the provisions of Section 2.20 as if it were an assignee under Section 9.01(c) and (B) no Participant shall be entitled to receive any greater amount pursuant to Section 2.18 or Section 2.19 than the transferor Lender would have been entitled to receive in respect of the amount of the participation transferred by such transferor Lender to such Participant had no such transfer occurred. Each Lender that sells a participation shall, acting solely for this purpose as a non-fiduciary agent of the Borrower, maintain a register on which it enters the name and address of each Participant and the principal amounts (and stated interest) of each Participant's interest in the Loans or other obligations under the Loan Documents (the "Participant Register"); provided that no Lender shall have any obligation to disclose all or any portion of the Participant Register (including the identity of any Participant or any information relating to a Participant's interest in any commitments, loans, letters of credit or its other obligations under any Loan Document) to any Person except to the extent that such disclosure is necessary to establish that such commitment, loan, letter of credit or other obligation is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations. The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary. For the avoidance of doubt, the Administrative Agent (in its capacity as Administrative Agent) shall have no responsibility for maintaining a Participant Register. Notwithstanding anything to the contrary contained in this Agreement, (x) for purposes of clarification, no Agent shall be under any duty to ascertain, inquire into, monitor, enforce compliance with or otherwise make any determinations with respect to the sales of participating interests pursuant to this clause (b) (including (i) whether any Participant qualifies as an Eligible Assignee and (ii) as to whether an Eligible Assignee is a Disqualified Institution) and (y) neither any Agent nor any Lender (including any Lender selling participating interests to a Participant but excluding any Participant (who shall be liable to the Borrower in connection with such Participant not qualifying as an Eligible Assignee including as a result of qualifying as a Disqualified Institution)) shall be liable for any losses, damages, penalties, claims, demands, actions, judgments, suits, costs, expenses and disbursements of any kind or nature whatsoever incurred or suffered by any Person (including the Loan Parties) in connection with any Participant not qualifying as an Eligible Assignee; provided that any Lender participating interests to a Participant shall, as a condition to such sale, obtain a representation and warrant from such Participant that as of the date of such sale such Participant qualifies as an Eligible Assignee (which such Lender may accept in good faith but without due inquiry).

(c) Subject to the restrictions contained in this clause (c) (including the last two sentences hereof) and the definition of "Eligible Assignee", any Lender (an "Assignor") may, in accordance with applicable law and upon written consent of the Administrative Agent and the Borrower (except in the case of assignments of Loans or Commitments to any Lender, any Affiliate of the assigning Lender or of another Lender or any Approved Fund, in which case the consent of the Borrower shall not be required)) and the Issuing Bank (in each case not to be unreasonably withheld, conditioned

or delayed), at any time and from time to time assign to any Lender, any Affiliate of the assigning Lender or of another Lender or any Approved Fund or to an additional bank, financial institution or other entity that is an Eligible Assignee (an "Assignee") all or any part of its rights and obligations under this Agreement pursuant to an Assignment and Acceptance, executed by such Assignee, such Assignor and the Administrative Agent (and, where the consent of the Borrower or the Issuing Bank is required pursuant to the foregoing provisions, by the Borrower or the Issuing Bank) and delivered to the Administrative Agent for its acceptance and recording in the Register, together with a processing or recordation fee of $3,500 (which fee may be waived or reduced in the sole discretion of the Administrative Agent), an Administrative Questionnaire from the Assignee (to the extent such Assignee is not a Lender) and all applicable tax forms required pursuant to Section 2.19; provided, that no such assignment to an Assignee (other than any Lender or any Affiliate of the assigning Lender or of another Lender or any Approved Fund) shall be in an aggregate principal amount of less than $1,000,000, unless otherwise agreed by the Borrower and the Administrative Agent (provided, that for purposes of the foregoing limitations only, any two or more Funds that concurrently invest in Loans and are managed by the same investment advisor, or investment advisors that are Affiliates of one another, shall be treated as a single Assignee or Assignor); provided further, that the Borrower shall have deemed to have consented to any such assignment unless it shall object thereto by written notice to the Administrative Agent within five (5) Business Days after having received notice thereof (and any consent of the Borrower to any assignment (whether an affirmative or deemed consent) shall be deemed a determination by the Borrower that the Assignee is not a Disqualified Institution of the type described in clause (b) or (c) of the definition thereof as of the date of assignment (for purposes of satisfaction of applicable criteria set forth in the definition of Eligible Assignee)). Any such assignment shall be made as an assignment of a proportionate part of all of the Assignor's rights and obligations under this Agreement with respect to the Loan or the Commitment so assigned. Upon such execution, delivery, acceptance and recording, from and after the effective date determined pursuant to such Assignment and Acceptance, (x) the Assignee thereunder shall be a party hereto and, to the extent provided in such Assignment and Acceptance, have the rights and obligations of a Lender hereunder with respect to Commitments and/or Loans as set forth therein, and (y) the Assignor thereunder shall, to the extent provided in such Assignment and Acceptance, be released from its obligations under this Agreement (and, in the case of an Assignment and Acceptance covering all of an Assignor's rights and obligations under this Agreement, such Assignor shall cease to be a party hereto). Notwithstanding any provision of this Section 9.04(c), the consent of the Borrower shall not be required at any time when any Default under Section 7.01(c) or (h) or any Event of Default under Section 7.01(b), (c), (h) or (i) shall have occurred and be continuing or the Loans then outstanding have become or otherwise been declared due and payable in whole or in part by acceleration or otherwise. In connection with any assignment of rights and obligations of any Defaulting Lender hereunder, no such assignment shall be effective unless and until, in addition to the other conditions thereto set forth herein, the parties to the assignment shall make such additional payments to the Administrative Agent in an aggregate amount sufficient, upon distribution thereof as appropriate (which may be outright payment, purchases by the assignee of participations or sub-participations, or other compensating actions, including funding, with the consent of the Borrower and the Administrative Agent, the applicable Pro Rata Share of Loans previously requested but not funded by the Defaulting Lender, to each of which the applicable assignee and assignor hereby irrevocably consent), to (x) pay and satisfy in full all payment liabilities then owed by such Defaulting Lender to the Administrative Agent, the Issuing

Bank and each other Lender hereunder (and interest accrued thereon), and (y) acquire (and fund as appropriate) its full Pro Rata Share of all Loans and participations in Letters of Credit. Notwithstanding the foregoing, in the event that any assignment of rights and obligations of any Defaulting Lender hereunder shall become effective under applicable law without compliance with the provisions of this paragraph, then the assignee of such interest shall be deemed to be a Defaulting Lender for all purposes of this Agreement until such compliance occurs. Furthermore, notwithstanding anything to the contrary contained in this Agreement (x) for purposes of clarification, no Agent shall be under any duty to ascertain, inquire into, monitor, enforce compliance with or otherwise make any determinations with respect to whether any Assignee qualifies as an Eligible Assignee (including as to whether an Eligible Assignee is a Disqualified Institution), (y) neither any Agent nor any Lender (excluding any Assignee (who shall be liable to the Borrower in connection with such Assignee not qualifying as an Eligible Assignee) (including as the result of qualifying as a Disqualified Institution) shall be liable for any losses, damages, penalties, claims, demands, actions, judgments, suits, costs, expenses and disbursements of any kind or nature whatsoever incurred or suffered by any Person (including the Loan Parties) in connection with any Assignee not qualifying as an Eligible Assignee (including as a result of qualifying as a Disqualified Institution); provided that any Assignor shall, as a condition to any assignment to an Assignee, obtain a representation and warranty from such Assignee that as of the date of such assignment, such Assignee qualifies as an Eligible Assignee (which such Assignor may accept in good faith but without due inquiry) and (z) any consent of the Borrower to any assignment under this clause (c) (whether an affirmative or deemed consent) shall be deemed a determination by the Borrower that the Assignee is not a Disqualified Institution pursuant to clause (b) or (c) of the definition thereof as of the date of assignment.

(d) Upon its receipt of an Assignment and Acceptance executed by an Assignor (other than the execution by a Terminated Lender or a Disqualified Institution that has otherwise pursuant to this Agreement been deemed to have consented thereto) and an Assignee (and, in any case where the consent of any other Person is required by Section 9.04(c), by each such other Person), an Administrative Questionnaire completed in respect of the Assignee (unless the Assignee shall already be a Lender hereunder), the processing and recordation fee referred to in paragraph (c) above, if applicable, and any applicable tax forms, the Administrative Agent shall (i) promptly accept such Assignment and Acceptance and (ii) on the effective date determined pursuant thereto record the information contained therein in the Register. On or within five (5) Business Days after such effective date, the Borrower, at its own expense, upon request, shall execute and deliver to the Assignor and Assignee, respectively (in exchange for any Note of the assigning Lender), a new Note or Notes to such Assignee or its registered assigns in an amount equal to the Commitment or share of outstanding Loans assumed or acquired by it pursuant to such Assignment and Acceptance and, if the Assignor has retained any portion of the Commitments or share of outstanding Loans, upon request, a new Note or Notes to the Assignor or its registered assigns in an amount equal to such Commitments or share of outstanding Loans, as the case may be, retained by it hereunder. Such new Note or Notes shall otherwise be in the form of the Note or Notes replaced thereby. Any assignment of any Loan, whether or not evidenced by a Note, shall be effective only upon appropriate entries with respect thereto being made in the Register (and each Note shall expressly so provide).

(e) For the avoidance of doubt, the parties to this Agreement acknowledge that the provisions of this Section 9.04 concerning assignments of Loans and Notes relate only to absolute assignments and that such provisions do not prohibit assignments creating security interests, including any pledge or assignment by a Lender of any Loan or Note to (x) any Federal Reserve Bank or (y) any lender of a Lender, in each case, in accordance with applicable law; provided that no such pledge or assignment shall release the relevant Lender from any of its obligations under this Agreement or any other Loan Document.

(f) The Borrower shall not, and shall ensure that none of the other Companies will, assign or delegate any of its rights or duties hereunder or under any other Loan Document without the prior written consent of the Administrative Agent and each Lender, and any attempted assignment without such consent shall be null and void.

(g)

(i) No assignment or participation shall be made to any Person that was a Disqualified Institution as of the date (the "Trade Date") on which the assigning Lender entered into a binding agreement to sell and assign all or a portion of its rights and obligations under this Agreement to such Person (unless the Borrower has consented to such assignment in writing in its sole and absolute discretion, in which case such Person will not be considered a Disqualified Institution pursuant to clauses (b) and (c) of the definition thereof for the purpose of such assignment or participation). For the avoidance of doubt, with respect to any assignee that becomes a Disqualified Institution after the applicable Trade Date (including as a result of the delivery of a notice pursuant to, and/or the expiration of the notice period referred to in, the definition of "Disqualified Institution"), (x) such assignee shall not retroactively be disqualified from becoming a Lender and (y) the execution by the Borrower of an Assignment and Acceptance with respect to such assignee will not by itself result in such assignee no longer being considered a Disqualified Institution. Any assignment in violation of this Section 9.04(g)(i) shall not be void, but, in addition to any other rights or remedies the Borrower may have with respect to such Disqualified Institution at law or in equity, the other provisions of this Section 9.04(g) shall apply.

(ii) If any assignment or participation is made to any Disqualified Institution without the Borrower's prior written consent in violation of Section 9.04(g)(i) above, or if any Person becomes a Disqualified Institution after the applicable Trade Date, the Borrower may at its sole expense, upon notice to the applicable Disqualified Institution and the Administrative Agent, (A) terminate any Commitment of such Disqualified Institution and repay all obligations of the Borrower owing to such Disqualified Institution in connection with such Commitment and/or (B) require such Disqualified Institution to assign, without recourse (in accordance with and subject to the restrictions contained in this Section 9.04), all of its interest, rights and obligations under this Agreement to one or more Eligible Assignees at the lesser of (x) the principal amount thereof and (y) the amount that such Disqualified Institution paid to acquire such interests, rights and obligations, in each case plus accrued interest, accrued fees and all other amounts (other than principal amounts) payable to it hereunder (provided that in the event such Disqualified Institution does not

execute an Assignment and Acceptance within one Business Day after having received a request therefor, such Disqualified Institution shall be deemed to have consented to such Assignment and Acceptance).

(iii) Notwithstanding anything to the contrary contained in this Agreement, each Disqualified Institution party hereto hereby agrees that the provisions of Section 9.04(g)(i), 9.04(h) and 9.04(i) of the Term Loan Agreement (as in effect on the Closing Date) (made applicable to all Loans of such Disqualified Institution) shall in each case, be deemed applicable to it *mutatis mutandis* as if it was an Affiliated Lender (as defined in the Term Loan Agreement) thereunder, such provisions being incorporated into this clause (iii) by this reference as though specifically set forth herein and made so applicable.

(iv) No Agent shall be responsible or have any liability for, or have any duty to ascertain, inquire into, monitor or enforce compliance with the provisions of this Agreement or the other Loan Documents relating to Disqualified Institutions. Without limiting the generality of the foregoing, no Agent shall (x) be obligated to ascertain, monitor or inquire as to whether any Lender or Participant or prospective Lender or Participant is a Disqualified Iinstitution or (y) have any liability with respect to or arising out of any assignment or participation of Loans, or disclosure of confidential information, to any Disqualified Institution.

Section 9.05. Expenses; Indemnity.

(a) Whether or not the Transactions shall be consummated, the Borrower agrees to pay promptly (i) all the actual, reasonable and documented out-of-pocket costs and expenses of the Agents, the Lead Arranger and the Issuing Bank in connection with (v) the syndication of the Loans and Commitments, (w) the negotiation, preparation, execution and administration of the Loan Documents, (x) any consents, amendments, waivers or other modifications thereto and the transactions contemplated thereby, (y) creating, perfecting and insuring Liens on the Collateral in favor of the Collateral Agent, for the benefit of the Secured Parties (including filing and recording fees, expenses and taxes, stamp or documentary taxes, search fees and title insurance premiums), and (z) the custody or preservation of any of the Collateral, including reasonable fees, expenses and disbursements of (I) outside counsel to the Agents, the Lead Arranger and the Issuing Bank (such counsel to be limited to one general transaction counsel, one local New York counsel, one local New York gaming counsel and, if reasonably required, one local counsel in any other relevant jurisdiction), and (II) the Insurance Advisor and any other appraisers, advisors or consultants; and (ii) all actual and documented out-of-pocket costs and expenses, including outside attorneys' fees, disbursements and other charges and costs of settlement, incurred by the Lead Arranger, any Agent or any Lender in enforcing any Obligations of, or in collecting any payments due from, any Company hereunder or under the other Loan Documents (or any other party to a Subordination Agreement) (including in connection with the inspection of the books and records of any Company, the sale of, collection from, or other realization upon any of the Collateral or the enforcement of the Security Documents) or in connection with any refinancing or restructuring of the credit arrangements provided hereunder in the nature of a "work-out" or pursuant to any insolvency or bankruptcy cases or proceedings (provided that, in the case of this clause (ii), such reimbursement for attorneys' fees

shall be with respect to the Administrative Agent's counsel and one set of counsel for the Lenders as selected by the Required Lenders only (which shall include in each case (I) workout or other specialty related counsel, (II) general transaction related counsel, (III) local New York related counsel and (IV) local New York gaming related counsel)), and in the case of an actual or perceived conflict of interest as reasonably determined by the affected Person or Persons, one additional set of counsel (including only one additional (I) workout or other specialty related counsel, (II) general transaction related counsel, (III) local New York related counsel and/or (IV) local New York gaming related counsel) to each Person or group of affected Persons similarly situated taken as a whole).

(b) The Borrower agrees, whether or not the Transactions have been consummated, to indemnify and defend each Agent, the Lead Arranger, each Lender and each Related Party of any of the foregoing Persons (each such Person being called an "Indemnitee") against, and to hold each Indemnitee harmless from, and shall pay or reimburse any such Indemnitee for, any and all documented losses, claims, damages, liabilities and related costs and expenses, including reasonable counsel fees, disbursements and other charges, incurred by or asserted against any Indemnitee arising out of, in any way connected with, or as a result of (i) the execution or delivery of this Agreement or any other Loan Document or any agreement or instrument contemplated hereby or thereby, the performance by the parties hereto or thereto of their respective obligations hereunder or thereunder or the consummation of the Transactions or the other transactions contemplated hereby or thereby, (ii) any Loans or issuances of Letters of Credit or the use of the proceeds therefrom, (iii) any claim, litigation, investigation or proceeding and the prosecution and defense thereof relating to any of the foregoing or the Transactions, whether or not any Indemnitee is a party thereto and whether or not such claim, litigation, investigation or proceeding is initiated by the Borrower or any Affiliate of the Borrower or any other Person, (iv) actions of the Lead Arranger in arranging and/or syndicating the Loans and/or the Facility, or (v) any actual or alleged presence or Release of Hazardous Materials on any property owned or operated by any Loan Party or any Unrestricted Subsidiary, or any Environmental Liability related in any way to any Loan Party or any Unrestricted Subsidiary; provided that such indemnity shall not, as to any Indemnitee, be available (A) to the extent that such losses, claims, damages, liabilities or related costs and expenses are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted primarily from the gross negligence or willful misconduct of such Indemnitee or its Related Parties (and, upon any such determination, any indemnification payments with respect to such losses, claims, damages, liabilities or related costs and expenses previously received by such Indemnitee shall be subject to reimbursement by such Indemnitee), (B) to the extent arising out of claims or disputes between two or more Indemnitees (other than any Indemnitee acting in their capacities as the Lead Arranger or Agent) and that does not arise from an act or omission of the Borrower or any of its Affiliates or (C) any settlement entered into by such Indemnitee without the Borrower's written consent, such consent not to be unreasonably withheld, delayed or conditioned (provided, however, if at any time an Indemnitee shall have requested that the Borrower reimburse such Indemnitee for legal or other expenses in connection with investigating, responding to or defending any proceeding, the Borrower shall be liable for any settlement of any proceeding effected without the Borrower's written consent if (a) such settlement is entered into more than twenty (20) Business Days after receipt by the Borrower of such request for reimbursement and (b) the Borrower shall not have reimbursed such Indemnitee in accordance with such request prior to the date of such settlement). To the extent that the undertakings to defend, indemnify, pay and hold harmless set forth in this

Section 9.05(b) may be unenforceable in whole or in part because they are violative of any law or public policy, the Borrower shall contribute the maximum portion that it is permitted to pay and satisfy under applicable law to the payment and satisfaction of all indemnified liabilities incurred by Indemnitees or any of them.

(c) To the extent permitted by applicable law, the Borrower shall not assert, and hereby waives, and shall not permit any Loan Party to assert and shall cause each Loan Party to waive, any claim against any Indemnitee, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement or any agreement or instrument contemplated hereby, the Transactions, any Loan or Letter of Credit or the use of the proceeds thereof.

(d) To the extent permitted by applicable law and except to the extent expressly provided for in Section 2.09, Section 2.17(c), Section 2.18, Section 2.19, Section 2.20 or Section 2.23, no Agent nor Lender shall assert, and each Agent and each Lender hereby waives, any claim against any Company, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement or any agreement or instrument contemplated hereby, the Transactions, any Loan or Letter of Credit or the use of the proceeds thereof; provided that this clause (d) shall in no manner limit any Indemnitee's rights pursuant to Section 9.05(b) with respect to special, indirect, consequential or punitive damages payable by such Indemnitee to another Person. The indemnity and other obligations of the Borrower under this Section 9.05 shall not apply with respect to Taxes, other than any Taxes that represent losses, claims, damages, etc. arising from any non-Tax claim.

Section 9.06. Adjustments; Setoff. Notwithstanding Section 8.09(b), if an Event of Default shall have occurred and be continuing, each Lender and each of its Affiliates is hereby authorized at any time and from time to time, except to the extent prohibited by law, with the prior written consent of the Administrative Agent, to set off and apply any and all deposits (general or special, time or demand, provisional or final) at any time held and other indebtedness at any time owing by such Lender or any such Affiliate to or for the credit or the account of any Loan Party against any or all of the obligations of the Borrower and the other Loan Parties now or hereafter existing under this Agreement and the other Loan Documents held by such Lender, irrespective of whether or not such Lender shall have made any demand under this Agreement or such other Loan Document for amounts then due and owing and although such obligations may be unmatured; provided, that in the event that any Defaulting Lender shall exercise any such right of setoff, (x) all amounts so set off shall be paid over immediately to the Administrative Agent for further application in accordance with the provisions of Section 2.21 and, pending such payment, shall be segregated by such Defaulting Lender from its other funds and deemed held in trust for the benefit of the Administrative Agent, the Issuing Bank, and the Lenders, and (y) the Defaulting Lender shall provide promptly to the Administrative Agent a statement describing in reasonable detail the Obligations owing to such Defaulting Lender as to which it exercised such right of setoff. Each Lender agrees to notify the Borrower and the Administrative Agent promptly after any such setoff and application; provided that the failure to give such notice shall not affect the validity of such setoff and application. The rights of each Lender under this Section 9.06 are in addition to other rights and remedies (including other rights of setoff) which such Lender may have.

Section 9.07. Governing Law. THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS (EXCEPT, AS TO ANY OTHER LOAN DOCUMENT, AS EXPRESSLY SET FORTH THEREIN) AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HERETO AND THERETO, HEREUNDER AND THEREUNDER, SHALL BE CONSTRUED IN ACCORDANCE WITH, AND GOVERNED BY, THE LAWS OF THE STATE OF NEW YORK (WITHOUT REGARD TO CONFLICT OF LAWS PROVISIONS THAT WOULD RESULT IN THE APPLICATION OF LAWS OTHER THAN THE LAWS OF THE STATE OF NEW YORK).

Section 9.08. Waivers; Amendment.

(a) No failure or delay on the part of any Agent, the Lead Arranger or any Lender in exercising any power or right hereunder or under any other Loan Document shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or power, or any abandonment or discontinuance of steps to enforce such a right or power, preclude any other or further exercise thereof or the exercise of any other right or power. The rights and remedies of the Agents, the Lead Arranger and the Lenders hereunder and under the other Loan Documents are cumulative and are not exclusive of any rights or remedies that they would otherwise have. No waiver of any provision of this Agreement or any other Loan Document or consent to any departure by any Company therefrom shall in any event be effective unless the same shall be permitted by Section 9.08(b), and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. No notice or demand on the Borrower in any case shall entitle the Borrower to any other or further notice or demand in similar or other circumstances.

(b) Neither this Agreement, any other Loan Document nor any provision hereof or thereof may be waived, amended or modified except pursuant to an agreement or agreements in writing entered into by the Companies (to the extent party to the relevant Loan Document) and the Required Lenders (or by the Administrative Agent with the consent of the Required Lenders) and, in the case of an amendment or modification, signed by the Loan Parties party hereto or thereto, and in any case delivered to the Administrative Agent. Notwithstanding the foregoing, no such agreement shall:

(i) forgive or reduce the principal amount or extend the final scheduled date of maturity of any Loan, reduce the amount of any reimbursement obligation in respect of any Letter of Credit, reduce any Fee or the stated rate of any repayment premium or interest payable hereunder or forgive the payment of any Fee, repayment premium or interest payable hereunder or extend the scheduled date of any payment thereof, increase the amount or extend the expiration date of any Commitment of any Lender, extend the stated expiration date of any Letter of Credit beyond the Commitment Termination Date or amend or modify the pro rata requirements of Section 2.15(c), Section 2.16, Section 7.02, the pro rata requirements of Section 2.05(a) or the definition of the term "Pro Rata Share" in each case without the prior written consent of each Lender directly and adversely affected thereby (such consent being in lieu of the consent of the Required Lenders required pursuant to the first sentence of this Section 9.08(b) other than in the case of an increase in any Commitment, which shall also require the consent of the Required Lenders); provided, however, that only the consent of the Required Lenders shall be necessary (A) to amend the definition of "Default Rate,",

(B) to waive any obligation of the Borrower to pay interest at the Default Rate or (C) with respect to any additional extensions of credit pursuant hereto as are approved by the Required Lenders, to include the Lenders advancing such additional funds in the determination of "Pro Rata Share" on substantially the same basis as the Commitments and the Loans funded thereunder.

(ii) amend or modify the provisions of Section 9.04 (including amendments or modifications to the definition of "Eligible Assignee" intended to limit (as opposed to expand) those Persons qualifying thereunder), the provisions of this Section 9.08(b) or the definition of the term "Required Lenders" or release all or substantially all of Guarantee obligations of the Subsidiary Guarantors under the Subsidiary Guaranty, in each case without the prior written consent of each Lender (provided, that, with respect to any additional extensions of credit pursuant hereto as are approved by the Required Lenders, the consent of the Required Lenders only shall be required to include the Lenders advancing such additional funds in the determination of "Required Lenders" on substantially the same basis as the Commitments and the Loans funded thereunder);

(iii) release all or substantially all of the Collateral or any material guarantor of the Obligations in any transaction or series of related transactions (except to the extent such release is contemplated under, and in accordance with, this Agreement or the other Loan Documents and except in connection with a "credit bid" undertaken by the Administrative Agent or the Collateral Agent at the direction of the Required Lenders pursuant to Section 363(k), Section 1129(b)(2)(a)(ii) or otherwise of Title 11 of the United States Code entitled "Bankruptcy," as now and hereafter in effect, or any successor statute or other sale or disposition of assets in connection with an enforcement action with respect to Collateral permitted pursuant to the Loan Documents (in which case only the consent of the Required Lenders will be needed for such release)) without the prior written consent of each Lender;

(iv) amend, modify, supplement or waive any condition precedent set forth in Section 4.01 without the consent of each Lender (such consent being in lieu of the consent of the Required Lenders required pursuant to the first sentence of this Section 9.08(b)); or

(v) amend, modify, supplement or waive, or permit or consent to the amendment, modification, supplement or waiver of, this Agreement, the Subsidiary Guaranty, any Security Document or any provision hereof or thereof so as to alter the ratable treatment of Obligations arising hereunder or thereunder (it being understood that additional extensions of credit hereunder may share ratably in the payment of Obligations and the Collateral in accordance with the terms of this Agreement (including pursuant to Section 2.14 and Section 7.02 hereof)) or Obligations arising under Specified Cash Management Agreements, the provisions of Section 8.09(a) (as they relate to Obligations under Specified Cash Management Agreements) or the definitions of "Cash Management Agreement," "Obligations," "Secured Parties" or "Specified Cash Management Agreement," in each case in a manner adverse to any counterparty of a Loan Party under any Specified Cash Management Agreement with Obligations thereunder then outstanding, without the prior written consent of such counterparty;

provided, further, that no such agreement shall amend, modify or otherwise affect the rights or duties of any Agent, the Lead Arranger or the Issuing Bank hereunder or under any other Loan Document without the prior written consent of such Agent, such Lead Arranger or the Issuing Bank, as applicable. Subject to the provisions of Article VIII and any independent consent rights the Administrative Agent may have pursuant to the last proviso of this clause (b), the Administrative Agent (solely in such capacity) shall enter into such waivers, amendments and modifications to the Loan Documents as directed by the requisite Lenders.

(c) Notwithstanding anything to the contrary in this Section 9.08, the parties to the Fee Letter may (i) enter into written amendments, supplements or modifications thereto for the purpose of adding any provisions thereto or changing in any manner the rights thereunder of the parties thereto or (ii) waive, on such terms and conditions as may be specified in the instrument of waiver, (1) any of the requirements of the Fee Letter or (2) any Default or Event of Default to the extent (and only to the extent) relating to the Fee Letter, it being understood that the waiver of any Default or Event of Default (or portion thereof) relating to any of the other Loan Documents may be accomplished only as set forth in Section 9.08(b).

(d) Subject to the provisions of Article VIII and any independent consent rights the Administrative Agent may have pursuant to the last proviso of clause (b) above, the Administrative Agent or the Collateral Agent may, but shall have no obligation to, with the concurrence of any Lender, execute amendments, modifications, waivers or consents on behalf of such Lender. Any waiver or consent shall be effective only in the specific instance and for the specific purpose for which it was given. No notice to or demand on any Company in any case shall entitle any Company to any other or further notice or demand in similar or other circumstances. Any amendment, modification, termination, waiver or consent effected in accordance with this Section 9.08 shall be binding upon each Secured Party at the time outstanding, each future Secured Party and, if signed by a Company, on such Company.

(e) Notwithstanding anything to the contrary contained in any Loan Document, without the consent of any other Secured Party, the applicable Company(ies) and the Administrative Agent and/or Collateral Agent may (in its or their respective sole discretion, or shall, to the extent required by any Loan Document) enter into (i) any amendments or agreements supplemental to this Agreement or any other Loan Document pursuant to the last sentence of Section 8.02 or (ii) any amendment or waiver of any Loan Document, or enter into any new agreement or instrument, to effect the granting, perfection, protection, expansion or enhancement of any security interest in any Collateral or additional property to become Collateral for the benefit of the Secured Parties, or as required by local law to give effect to, or protect any security interest for the benefit of the Secured Parties, in any property or so that the security interests therein comply with applicable Legal Requirements.

(f) No amendment, modification or waiver of any provision of this Agreement or any other Loan Document or consent to any departure by any Company or any Subsidiary therefrom, shall be made other than by a solicitation of all Lenders, each in their respective capacities as such, in a manner that treats all consenting Lenders (or all consenting Lenders in the relevant affected tranche whose consent is required by such event) in the same manner, and that requires that any

consent fee or other consideration payable to any Lender in its capacity as such in connection therewith be payable ratably to all Lenders (or all Lenders in the relevant affected tranche whose consent is required by such event) who consent to the requested amendment, modification, waiver or consent.

Section 9.09. **Interest Rate Limitation**. Notwithstanding anything herein to the contrary, if at any time the interest rate applicable to any Loan or participation in any drawing under any Letter of Credit, together with all Fees, charges and other amounts which are treated as interest on such Loan or participation in such drawing under any Letter of Credit under applicable law (collectively the "Charges"), shall exceed the maximum lawful rate (the "Maximum Rate") which may be contracted for, charged, taken, received or reserved by the Lender holding such Loan or participation in accordance with applicable law, the rate of interest payable in respect of such Loan or participation hereunder, together with all Charges payable in respect thereof, shall be limited to the Maximum Rate and, to the extent lawful, the interest and Charges that would have been payable in respect of such Loan or participation but were not payable as a result of the operation of this Section 9.09 shall be cumulated and the interest and Charges payable to such Lender in respect of other Loans or participations or periods shall be increased (but not above the Maximum Rate therefor) until such cumulated amount, together with interest thereon at the Federal Funds Effective Rate to the date of repayment, shall have been received by such Lender.

Section 9.10. **Entire Agreement**. This Agreement, the Fee Letter and the other Loan Documents constitute the entire contract between the parties relative to the subject matter hereof and any other previous agreement among the parties with respect to the subject matter hereof is superseded by this Agreement and the other Loan Documents. Nothing in this Agreement, the Fee Letter or in the other Loan Documents, expressed or implied, is intended to confer upon any Person (other than the parties hereto and thereto, their respective successors and assigns permitted hereunder (including any Affiliate of the Issuing Bank that issues any Letter of Credit) and, to the extent expressly contemplated hereby, the Related Parties of each of the Agents, the Lead Arranger and the Lenders) any rights, remedies, obligations or liabilities under or by reason of this Agreement or the other Loan Documents.

Section 9.11. **WAIVER OF JURY TRIAL** . EACH PARTY HERETO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ANY OF THE OTHER LOAN DOCUMENTS OR ANY SPECIFIED CASH MANAGEMENT AGREEMENT. EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS AND SPECIFIED CASH MANAGEMENT AGREEMENTS TO WHICH IT IS A PARTY BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 9.11.

Section 9.12. **Severability**. In the event any one or more of the provisions contained in this Agreement or in any other Loan Document should be held invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein and therein shall not in any way be affected or impaired thereby (it being understood that the invalidity of a particular provision in a particular jurisdiction shall not in and of itself affect the validity of such provision in any other jurisdiction). The parties shall endeavor in good-faith negotiations to replace the invalid, illegal or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the invalid, illegal or unenforceable provisions.

Section 9.13. **Counterparts**. This Agreement may be executed in counterparts (and by different parties hereto on different counterparts), each of which shall be deemed an original but all of which when taken together shall constitute a single contract, and shall become effective as provided in Section 9.03. Delivery of an executed signature page to this Agreement or of a Lender Addendum by facsimile transmission, "pdf" or similar electronic copy shall be as effective as delivery of a manually signed counterpart of this Agreement. Any party hereto may request an original counterpart of any party delivering such electronic counterpart. A set of the copies of this Agreement signed by all the parties shall be lodged with the Borrower and the Administrative Agent.

Section 9.14. **Headings**. Article and Section headings and the Table of Contents used herein are for convenience of reference only, are not part of this Agreement and are not to affect the construction of, or to be taken into consideration in interpreting, this Agreement.

Section 9.15. **Consent to Jurisdiction**.

(a) The Borrower hereby irrevocably and unconditionally submits, for itself and its property, to the exclusive jurisdiction of any New York State court or Federal court of the United States of America sitting in New York City, Borough of Manhattan, and any appellate court from any thereof, in any action or proceeding arising out of or relating to this Agreement, the other Loan Documents or the Specified Cash Management Agreements, or for recognition or enforcement of any judgment, and each of the parties hereto hereby irrevocably and unconditionally agrees that all claims in respect of any such action or proceeding may be heard and determined in such New York State court or, to the extent permitted by law, in such Federal court; provided that, at the option of the Agents, any of the Agents may commence a suit or action against the Borrower in another New York State court or another Federal court of the United States of America sitting in the State of New York to foreclose the Lien of the Mortgages and the Assignment of Leases and Rents and enforce the Obligations in connection therewith. Each of the parties hereto agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Nothing in this Agreement, however, shall affect any right that any Agent, the Lead Arranger or any Lender may otherwise have to bring any action or proceeding relating to this Agreement, the other Loan Documents or the Specified Cash Management Agreements against the Borrower or its properties in the courts of any jurisdiction.

(b) The Borrower hereby irrevocably and unconditionally waives, to the fullest extent it may legally and effectively do so, any objection which it may now or hereafter have to the laying of venue of any suit, action or proceeding arising out of or relating to this Agreement, the other

Loan Documents or Specified Cash Management Agreements or for recognition or enforcement of any judgment in any New York State or Federal court of the United States of America sitting in New York City, Borough of Manhattan or other New York jurisdiction as set forth in clause (a) above. Each of the parties hereto hereby irrevocably and unconditionally waives, to the fullest extent permitted by law, the defense of an inconvenient forum to the maintenance of such suit, action or proceeding in any such court.

(c) Each party to this Agreement irrevocably consents to service of process in the manner provided for notices in Section 9.01. Nothing in this Agreement will affect the right of any party to this Agreement to serve process in any other manner permitted by law.

(d) With respect to any action by the Administrative Agent or the Collateral Agent to enforce the rights and remedies of the Administrative Agent or the Collateral Agent, as applicable, under this Agreement, and the other Loan Documents, each Lender hereby consents to the jurisdiction of the court in which such action is maintained, and agrees to deliver its Notes to the Administrative Agent (who may deliver such Notes to the Collateral Agent) to the extent necessary to enforce the rights and remedies of the Administrative Agent or the Collateral Agent for the benefit of the Lenders under the Mortgages in accordance with the provisions of this Agreement.

Section 9.16. Confidentiality. Each of the Agents, the Lead Arranger, the Issuing Bank and the Lenders agree to maintain the confidentiality of the Information, except that Information may be disclosed (a) (i) to the Lead Arranger, any Agent and any Lender and (ii) to its and its Affiliates' officers, directors, employees, trustees, shareholders, partners, equity holders, managers and agents, including accountants, legal counsel, other advisors and any numbering, administration or settlement service providers (it being understood that the Persons described in this clause (ii) to whom such disclosure is made will be informed of the confidential nature of such Information and required to keep such Information confidential), (b) to the extent requested by any regulatory authority, quasi-regulatory authority (such as the National Association of Insurance Commissioners) or other Governmental Authority, (c) to the extent required by applicable laws or regulations or by any subpoena or similar legal process, (d) in connection with the exercise of any remedies hereunder or under the other Loan Documents or any suit, action or proceeding relating to the enforcement of its rights hereunder or thereunder, (e) subject to an agreement containing provisions substantially the same as those of this Section 9.16, to (i) any actual or prospective assignee of, successor to or participant in any of its rights or obligations under this Agreement or the other Loan Documents, (ii) any pledgee referred to in Section 9.04(e) or (iii) any actual or prospective counterparty (or its advisors) to any swap or derivative transaction relating to the Loan Parties or any of their respective obligations, (f) with the consent of the Borrower, (g) to any rating agency when required by it, provided that, prior to any disclosure, such rating agency shall undertake in writing to preserve the confidentiality of any confidential information relating to the Loan Parties received by it from any of the Lead Arranger, the Agents or the Lenders, (h) to the extent such Information becomes publicly available other than as a result of a breach of this Section 9.16, (i) to the CUSIP Service Bureau or any similar agency in connection with the issuance and monitoring of CUSIP numbers with respect to the Facility, or (j) service providers to the Administrative Agent in connection with the administration, settlement and management of this Agreement and the Loan Documents, or (k) to the extent independently developed by an Agent, the Lead Arranger, any Lender or any of their

respective Affiliates. For the purposes of this Section, "Information" shall mean all information received from or on behalf of the Borrower and related to a Company or its business, other than any such information that was available to the Agents, the Lead Arranger or any Lender on a nonconfidential basis prior to its disclosure by the Borrower. Any Person required to maintain the confidentiality of Information as provided in this Section 9.16 shall be considered to have complied with its obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such Information as such Person would accord its own confidential information.

Section 9.17. Acknowledgments. The Borrower hereby acknowledges that:

(a) it has been advised by counsel in the negotiation, execution and delivery of this Agreement and the other Loan Documents;

(b) none of the Lead Arranger, the Agents or the Lenders has any fiduciary relationship with or duty to the Borrower or any other Company arising out of or in connection with this Agreement or any of the other Loan Documents, and the relationship between the Lead Arranger, the Agents and the Lenders, on one hand, and the Borrower and the other Companies, on the other hand, in connection herewith or therewith, is solely that of debtor and creditor; and

(c) no joint venture is created hereby or by the other Loan Documents or otherwise exists by virtue of the transactions contemplated hereby or thereby among the Lead Arranger, the Agents and the Lenders or among the Borrower, the other Companies and the Lenders. The amounts payable at any time hereunder to each Lender shall be a separate and independent debt, and each Lender shall be entitled to protect and enforce its rights arising out hereof and it shall not be necessary for any other Lender to be joined as an additional party in any proceeding for such purpose.

Section 9.18. Accounting Changes. In the event that any "Accounting Change" (as defined below) shall occur and such change results in a change in the method of calculation of financial covenants, standards or terms in this Agreement, then the parties hereto agree to enter into negotiations in order to amend such provisions of this Agreement so as to equitably reflect such Accounting Changes with the desired result that the criteria for evaluating the Borrower's and the other Companies' financial condition (including the requirements and restrictions associated with the provisions of this Agreement applicable thereto) shall be the same after such Accounting Changes as if such Accounting Changes had not been made. Until such time as such an amendment shall have been executed and delivered by the Borrower, the Administrative Agent and the Required Lenders, all financial covenants, standards and terms in this Agreement shall continue to be calculated or construed as if such Accounting Changes had not occurred. "Accounting Changes" refers to changes in accounting principles required or permitted by the promulgation of any rule, regulation, pronouncement or opinion by the Financial Accounting Standards Board of the American Institute of Certified Public Accountants or, if applicable, the SEC or changes in the application or interpretation of such accounting principles required by the applicable Company's independent auditor (as set forth in an announcement or other interpretation published by such auditors).

Section 9.19. Construction. Each covenant contained herein shall be construed (absent express provision to the contrary) as being independent of each other covenant contained herein, so that compliance with any one covenant shall not (absent such an express contrary provision) be

deemed to excuse compliance with any other covenant. Where any provision herein refers to action to be taken by any Person, or which such Person is prohibited from taking, such provision shall be applicable whether such action is taken directly or indirectly by such Person.

Section 9.20. No Third Party Rights. Nothing expressed in or to be implied from this Agreement is intended to give, or shall be construed to give, any Person, other than the parties hereto, the Secured Parties, to the extent provided in Section 9.05, each other Indemnitee and to the extent provided in Section 8.03(b) and Section 9.05, each other Related Party and, in each case, their permitted successors and assigns hereunder, any benefit or legal or equitable right, remedy or claim under or by virtue of this Agreement or under or by virtue of any provision herein.

Section 9.21. Delivery of Lender Addenda. Each initial Lender shall become a party to this Agreement by delivering to the Administrative Agent a Lender Addendum duly executed by such Lender, the Borrower and the Administrative Agent.

Section 9.22. Patriot Act.

(a) Each Lender and the Administrative Agent (for itself and not on behalf of any Lender) hereby notifies the Borrower that pursuant to the requirements of the Patriot Act, it is required to obtain, verify and record information that identifies the Borrower and the other Loan Parties, which information includes the name, address and tax identification number of the Borrower and the other Loan Parties and other information that will allow such Lender or the Administrative Agent, as applicable, to identify the Borrower and the other Loan Parties in accordance with the Patriot Act. The Borrower hereby agrees to share, and to cause the other Loan Parties to share, all such information with the Lenders and the Administrative Agent.

(b) In order for the Administrative Agent to comply with the Patriot Act, prior to any Lender or Participant that is organized under the laws of a jurisdiction outside of the United States of America becoming a party hereto, the Administrative Agent may request, and such Lender or Participant shall provide to the Administrative Agent, its name, address, tax identification number and/or such other identification information as shall be necessary for the Administrative Agent to comply with federal law.

Section 9.23. Reversal of Payments. To the extent any Company makes a payment or payments to the Administrative Agent for the ratable benefit of the Lenders or the Administrative Agent receives any payment or proceeds of the Collateral which payments or proceeds or any part thereof are subsequently invalidated, declared to be fraudulent or preferential, set aside and/or required to be repaid to a trustee, receiver or any other party under any Debtor Relief Law, state or federal law, common law or equitable cause, then, to the extent of such payment or proceeds repaid, the Obligations or part thereof intended to be satisfied shall be revived and continued in full force and effect as if such payment or proceeds had not been received by the Administrative Agent.

Section 9.24. Intentionally Omitted.

Section 9.25. Administrative Agent May File Proofs of Claim. In case of the pendency of any proceeding under any Debtor Relief Law or any other judicial proceeding relative to any

Loan Party, the Administrative Agent (irrespective of whether the principal of any Loan or Letter of Credit shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether the Administrative Agent shall have made any demand on the Borrower) shall be entitled and empowered (but not obligated) by intervention in such proceeding or otherwise:

(a) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Loans, Letters of Credit and all other Obligations that are owing and unpaid and to file such other documents as may be necessary or advisable in order to have the claims of the Lenders, the Issuing Bank and the Agents (including any claim for the reasonable compensation, expenses, disbursements and advances of the Lenders, the Issuing Bank and the Agents and their respective agents and counsel and all other amounts due the Lenders, the Issuing Bank and the Administrative Agent under Section 2.10, Section 9.05 and the Fee Letter) allowed or allowable in such judicial proceeding; and/or

(b) to collect and receive any monies or other property payable or deliverable on any such claims and to distribute the same;

and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Lender and the Issuing Bank to make such payments to the Administrative Agent and, in the event that the Administrative Agent shall consent to the making of such payments directly to the Lenders and the Issuing Bank to pay to the Administrative Agent any amount due for the reasonable compensation, expenses, disbursements and advances of the Administrative Agent and its agents and counsel, and any other amounts due the Administrative Agent under Section 2.10, Section 9.05 and the Fee Letter.

Section 9.26. Credit Bidding.

(a) The Administrative Agent, on behalf of itself and the Lenders and other Secured Parties, shall have the right to credit bid all or any portion of the Obligations (including accepting some or all of the Collateral in satisfaction of some or all of the Obligations pursuant to a deed in lieu of foreclosure or otherwise) and in such manner purchase (either directly or through one or more acquisition vehicles) all or any portion of the Collateral (x) at any sale thereof conducted under the provisions of Title 11 of the United States Code entitled "Bankruptcy", including under Sections 363, 1123 or 1129 thereof, or any similar laws in any other jurisdictions to which a Loan Party is subject, (y) at any sale thereof conducted by (or with the consent or at the direction of) the Administrative Agent under the provisions of the UCC, including pursuant to Sections 9-610 or 9-620 of the UCC, or (z) at any other sale or foreclosure or acceptance of collateral in lieu of debt conducted by (or with the consent or at the direction of) the Administrative Agent (whether by judicial action or otherwise) in accordance with any applicable law. In connection with any such credit bid and purchase, the Obligations owed to the Secured Parties shall be entitled to be, and shall be, credit bid on a ratable basis (with Obligations with respect to contingent or unliquidated claims receiving contingent interests in the acquired assets on a ratable basis that would vest upon the liquidation of such claims in an amount proportional to the liquidated portion of the contingent claim amount used in allocating the contingent interests) in the asset or assets so purchased (or in the Capital Stock or debt instruments of the acquisition vehicle or vehicles that are used to consummate such purchase). In connection with any such bid, (A) the Administrative Agent shall

be authorized to form one or more acquisition vehicles to make a bid, (B) the Administrative Agent shall be authorized to adopt documents providing for the governance of the acquisition vehicle or vehicles (provided that any actions by the Administrative Agent with respect to such acquisition vehicle or vehicles, including any disposition of the assets or Capital Stock thereof shall be governed, directly or indirectly, by the vote of the Required Lenders, irrespective of the termination of this Agreement and without giving effect to the limitations on actions by the Required Lenders contained in clauses (b)(i) through (b)(xi) of Section 9.08 of this Agreement), (iii) the Administrative Agent shall be authorized to assign the relevant Obligations to any such acquisition vehicle pro rata by the Lenders, as a result of which each of the Lenders shall be deemed to have received a pro rata portion of any Capital Stock and/or debt instruments issued by such an acquisition vehicle on account of the assignment of the Obligations to be credit bid, all without the need for any Secured Party or acquisition vehicle to take any further action (and the limitations and requirements set forth in Section 9.04(c) shall not apply to such assignments), and (iv) to the extent that Obligations that are assigned to an acquisition vehicle are not used to acquire Collateral for any reason (as a result of another bid being higher or better, because the amount of Obligations assigned to the acquisition vehicle exceeds the amount of debt credit bid by the acquisition vehicle or otherwise), such Obligations shall automatically be reassigned to the Lenders pro rata and the Capital Stock and/or debt instruments issued by any acquisition vehicle on account of the Obligations that had been assigned to the acquisition vehicle shall automatically be cancelled, without the need for any Secured Party or any acquisition vehicle to take any further action.

(b) Each Lender hereby agrees that, except as otherwise provided in any Loan Document or with the written consent of the Administrative Agent and the Required Lenders, it will not take any enforcement action, accelerate obligations under any Loan Documents, or exercise any right that it might otherwise have under applicable law to credit bid at foreclosure sales, UCC sales or other similar dispositions of Collateral.

Section 9.27. Intentionally Omitted.

Section 9.28. Gaming Authorities. Notwithstanding anything to the contrary set forth in this Agreement or any other Loan Document, the Agents and the Lenders acknowledge that certain of their respective rights, remedies and powers under this Agreement and the other Loan Documents (including the exercise of remedial rights upon Collateral and voting of equity interests in (or otherwise taking control of) Persons licensed by the Gaming Authorities), may be exercised only to the extent that (i) the exercise thereof does not violate any applicable laws, rules and regulations of the Gaming Authorities, including the Gaming Laws, and (ii) all necessary approvals, licenses, permits, authorizations and consents from the Gaming Authorities required in connection therewith are obtained. Notwithstanding any other provision of this Agreement, the Borrower expressly authorizes the Lead Arranger, the Agents and the Lenders to cooperate with the Gaming Authorities in connection with the administration of their regulatory jurisdiction over the Companies, including the provision of such documents or other information as may be requested by any such Gaming Authorities relating to the Lead Arranger, the Agents, the Lenders, the Companies, or the Loan Documents. The parties acknowledge that the provisions of this Section 9.28 shall not be for the benefit of any Company or any other Person.

Section 9.29. Time is of the Essence. Time is of the essence as to each term or provision of this Agreement and each of the other Loan Documents

Section 9.30. Clarification. Notwithstanding anything to the contrary, the parties hereto understand and agree that Fifth Third Bank is acting in various capacities under this Agreement and the other Loan Documents and therefore shall be permitted to fulfill its roles and manage its various duties under this Agreement and the other Loan Documents in such manner as Fifth Third Bank sees fit and, for the avoidance of doubt, in lieu of sending notices to itself when acting in different capacities Fifth Third Bank may keep internal records regarding all such communications, notices and actions related to this Agreement and the other Loan Documents in accordance with its past practice.

Section 9.31. Acknowledgement and Consent to Bail-In of EEA Financial Institutions. Notwithstanding anything to the contrary in any Loan Document or in any other agreement, arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any EEA Financial Institution arising under any Loan Document, to the extent such liability is unsecured, may be subject to the write-down and conversion powers of an EEA Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:

(a) the application of any Write-Down and Conversion Powers by an EEA Resolution Authority to any such liabilities arising hereunder which may be payable to it by any party hereto that is an EEA Financial Institution; and

(b) the effects of any Bail-in Action on any such liability, including, if applicable:

(i) a reduction in full or in part or cancellation of any such liability;

(ii) a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such EEA Financial Institution, its parent undertaking, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Agreement or any other Loan Document; or

(iii) the variation of the terms of such liability in connection with the exercise of the write-down and conversion powers of any EEA Resolution Authority.

Section 9.32. Intercreditor Agreement. Without limiting the generality of Article VIII, each Lender acknowledges and agrees that (a) such Lender has received and reviewed a copy of the form of Intercreditor Agreement and copies of any exhibits and schedules thereto, (b) the Administrative Agent and the Collateral Agent are authorized to execute, deliver and perform their obligations under the Intercreditor Agreement on behalf of such Lender, (c) such Lender is and shall be bound (as a Lender) in all respects by the terms and conditions of the Intercreditor Agreement as if a direct signatory party thereto, and (d) in the event of any conflict between the terms of the Intercreditor Agreement and any other Loan Document, the terms of the Intercreditor Agreement shall govern and control.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by their respective authorized officers as of the day and year first above written.

MONTREIGN OPERATING COMPANY, LLC,
a New York limited liability company

By: /s/ Joseph A. D'Amato
Name: Joseph A. D'Amato
Title: President

FIFTH THIRD BANK,
as Administrative Agent

By: /s/ Knight D. Kieffer

Name: Knight D. Kieffer
Title: Vice President

EXHIBIT 10.53

EXHIBIT A
to Credit Agreement

FORM OF NOTE

$[1]**[___,___,___]**
[2]**[mm/dd/yy]** New York, New York

FOR VALUE RECEIVED, MONTREIGN OPERATING COMPANY, LLC, a New York limited liability company (the "**Borrower**"), promises to pay **[NAME OF LENDER]** ("**Payee**") or its registered assigns, on or before the Scheduled Maturity Date or such earlier date as provided in the Credit Agreement, the lesser of the principal amount of [1] **[DOLLARS]** ($**[___,___,___]**) or the unpaid principal amount of all advances of Loans from time to time made by Payee to the Borrower under the Credit Agreement.

The Borrower also promises to pay interest on the unpaid principal amount hereof, from the date hereof until such principal amount is paid in full, at the rates and at the times which shall be determined in accordance with the provisions of that certain Revolving Credit Agreement, dated as of January 24, 2017 (as amended, amended and restated, supplemented or otherwise modified from time to time, the "**Credit Agreement**"), by and among the Borrower, Fifth Third Bank, as administrative agent (in such capacity, together with its successors and assigns acting in such capacity, the "**Administrative Agent**"), and the banks, financial institutions and other entities from time to time party thereto as lenders. Unless otherwise defined herein or the context otherwise requires, capitalized terms used in this Note have the meanings provided in the Credit Agreement.

This Note is one of the "Notes" under, and is issued pursuant to and entitled to the benefits of, the Credit Agreement, to which reference is hereby made for a more complete statement of the terms and conditions under which the Loans evidenced hereby were or will be made and are to be repaid.

All payments of principal and interest in respect of this Note shall be made in lawful money of the United States of America in same day funds at the Principal Office of the Administrative Agent or at such other place as shall be designated in writing for such purpose in accordance with the terms of the Credit Agreement. Unless and until an Assignment and Acceptance effecting the assignment or transfer of the obligations evidenced hereby shall have been accepted by the Administrative Agent and recorded in the Register, the Borrower, each Agent and each Lender shall be entitled to deem and treat Payee as the owner and holder of this Note and the obligations evidenced hereby. Payee hereby agrees, by its acceptance hereof, that before disposing of this Note or any part hereof it will make a notation hereon of all principal payments previously made hereunder and of the date to which interest hereon has been paid; provided, the failure to make (or any error in making) a notation of any payment made on this Note shall not limit or otherwise affect the obligations of the Borrower hereunder with respect to payments of principal of or interest on this Note.

[1] Lender's Commitment
[2] Date of Issuance

This Note is subject to mandatory prepayment and to prepayment at the option of the Borrower, each as provided in the Credit Agreement.

THIS NOTE AND THE RIGHTS AND OBLIGATIONS OF THE BORROWER AND PAYEE HEREUNDER SHALL BE CONSTRUED IN ACCORDANCE WITH, AND GOVERNED BY, THE LAWS OF THE STATE OF NEW YORK (WITHOUT REGARD TO CONFLICT OF LAWS PROVISIONS THAT WOULD RESULT IN THE APPLICATION OF LAWS OTHER THAN THE LAWS OF THE STATE OF NEW YORK).

Upon the occurrence and during the continuation of an Event of Default, the unpaid balance of the principal amount of this Note, together with all accrued and unpaid interest thereon, may become, or may be declared to be, due and payable in the manner, upon the conditions and with the effect provided in the Credit Agreement.

The terms of this Note are subject to amendment only in the manner provided in the Credit Agreement.

No reference herein to the Credit Agreement and no provision of this Note or the Credit Agreement shall alter or impair the obligations of the Borrower, which are absolute and unconditional, to pay the principal of and interest on this Note at the place, at the respective times, and in the currency herein prescribed.

The Borrower promises to pay all documented out-of-pocket costs and expenses, including attorneys' fees, all as provided in the Loan Documents, incurred in the collection and enforcement of this Note. The Borrower and any endorsers of this Note hereby waive diligence, presentment, protest, demand notice of every kind and, to the full extent permitted by law, the right to plead any statute of limitations as a defense to any demand hereunder.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Borrower has caused this Note to be duly executed and delivered by its officer thereunto duly authorized as of the date and at the place first written above.

MONTREIGN OPERATING COMPANY, LLC,
a New York limited liability company

By: _____
Name: _____
Title: _____

TRANSACTIONS ON NOTE

Date	Amount of Loan Made This Date	Amount of Principal Paid This Date	Outstanding Principal Balance This Date	Notation Made By

EXHIBIT 10.54

SUBSIDIARY GUARANTY

This **SUBSIDIARY GUARANTY** (as amended, amended and restated, supplemented, or otherwise modified from time to time, this "**Guaranty**"), dated as of January 24, 2017, is made by MONTREIGN OPERATING COMPANY, LLC, a New York limited liability company (the "**Borrower**") and each of the other signatories hereto (together with the Borrower, each individually, a "**Guarantor**", and collectively, together with each Additional Guarantor, the "**Guarantors**") in favor of FIFTH THIRD BANK, in its capacity as administrative agent (in such capacity, together with its successors and assigns, the "**Administrative Agent**") for the benefit of the Secured Parties.

RECITALS

A. The Borrower has entered into that certain Revolving Credit Agreement, dated as of January 24, 2017 (as amended, amended and restated, supplemented or otherwise modified from time to time, the "**Credit Agreement**"), by and among the Borrower, the banks, financial institutions and other entities from time to time party thereto in the capacity of lenders (the "**Lenders**") and the Administrative Agent.

B. Each Guarantor (other than the Borrower) is a wholly-owned subsidiary of the Borrower, and each Guarantor will receive substantial benefit from the extensions of credit to the Borrower under the Credit Agreement.

C. It is a requirement under the Credit Agreement that the Obligations thereunder be guaranteed by the Guarantors, and the Guarantors are willing to irrevocably and unconditionally guarantee such Obligations.

AGREEMENT

NOW, THEREFORE, based upon the foregoing and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and in order to induce the Secured Parties to make extensions of credit under the Credit Agreement and to enter into the Loan Documents and the Specified Cash Management Agreements, the Guarantors hereby jointly and severally agree as follows:

SECTION 1. DEFINITIONS

1.1 Certain Defined Terms. As used in this Guaranty, the following terms shall have the following meanings unless the context otherwise requires:

"**Additional Guarantor**" has the meaning given in Section 3.12.

"**Adjusted Maximum Amount**" has the meaning given in Section 2.2(b).

"**Administrative Agent**" is defined in the preamble.

"**Aggregate Payments**" has the meaning given in Section 2.2(b).

"Bankruptcy Code" has the meaning given in Section 2.1.

"**Borrower**" is defined in the recitals.

"**Commodity Exchange Act**" means the Commodity Exchange Act (7 U.S.C. § 1 et seq.), as amended from time to time, and any successor statute.

"**Credit Agreement**" is defined in the recitals.

"**Direct Borrower Obligations**" means, with respect to the Borrower, any Obligation of the Borrower in its capacity as the borrower under the Credit Agreement, grantor under any Security Document, guarantor under this Guaranty or a counterparty obligor with respect to a Specified Cash Management Agreement.

"**Excluded Swap Obligation**" means, with respect to any Guarantor, (x) as it relates to all or a portion of the Guarantee of such Guarantor, any Swap Obligation if, and to the extent that, such Swap Obligation (or any Guarantee thereof) is or becomes illegal under the Commodity Exchange Act or any rule, regulation or order of the Commodity Futures Trading Commission (or the application or official interpretation of any thereof) by virtue of such Guarantor's failure for any reason to constitute an "eligible contract participant" as defined in the Commodity Exchange Act and the regulations thereunder at the time the Guarantee of such Guarantor would otherwise have become effective or unlawful with respect to such Swap Obligation or (y) as it relates to all or a portion of the grant by such Guarantor of a security interest, any Swap Obligation if, and to the extent that, such Swap Obligation (or such security interest in respect thereof) is or becomes illegal under the Commodity Exchange Act or any rule, regulation or order of the Commodity Futures Trading Commission (or the application or official interpretation of any thereof) by virtue of such Guarantor's failure for any reason to constitute an "eligible contract participant" as defined in the Commodity Exchange Act and the regulations thereunder at the time the security interest of such Guarantor would otherwise have become effective or unlawful with respect to such Swap Obligation. If a Swap Obligation arises under a master agreement governing more than one swap, such exclusion shall apply only to the portion of such Swap Obligation that is attributable to swaps for which such Guarantee or security interest is or becomes illegal or unlawful.

"**Fair Share**" has the meaning given in Section 2.2(b).

"**Fair Share Shortfall**" has the meaning given in Section 2.2(b).

"**Fraudulent Transfer Laws**" has the meaning given in Section 2.2(a).

"**Funding Guarantor**" has the meaning given in Section 2.2(b).

"**Guaranteed Obligations**" has the meaning given in Section 2.1.

"**Guarantor**" is defined in the preamble.

"**Guaranty**" is defined in the preamble.

"**Lenders**" is defined in the recitals.

"**Obligee Guarantor**" has the meaning given in Section 2.7.

"**Qualified ECP Guarantor**" means, in respect of any Swap Obligation, each Guarantor that has total assets exceeding $10,000,000 at the time the relevant Guarantee or grant of the relevant security interest becomes effective with respect to such Swap Obligation or such other Person as constitutes an "eligible contract participant" under the Commodity Exchange Act or any regulations promulgated thereunder and can cause another Person to qualify as an "eligible contract participant" at such time by entering into a keepwell under Section 1a(18)(A)(v)(II) of the Commodity Exchange Act.

"**Swap Obligation**" means, with respect to any Guarantor, any obligation to pay or perform under any agreement, contract or transaction that constitutes a "swap" within the meaning of section 1a(47) of the Commodity Exchange Act.

"Termination Date" means the date on which all Guaranteed Obligations have been "paid in full" as such term is defined in the Credit Agreement.

1.2 Interpretation.

(a) References to "Sections" shall be to Sections of this Guaranty unless otherwise specifically provided.

(b) Unless otherwise defined herein or the context otherwise requires, terms used in this Guaranty, including its preamble and recitals, have the meanings provided in the Credit Agreement.

(c) The rules of construction set forth in Sections 1.02 through 1.08 of the Credit Agreement, including with respect to the meaning of the expressions "payment in full", "paid in full" and any other similar terms or phrases when used with respect to the Guaranteed Obligations, shall be applicable to this Guaranty *mutatis mutandis*.

SECTION 2. THE GUARANTY

2.1 Guaranty of the Guaranteed Obligations. Subject to the provisions of Section 2.2(a), the Guarantors jointly and severally hereby irrevocably and unconditionally guaranty to the Administrative Agent, for the ratable benefit of the Secured Parties, the prompt and complete payment and performance in full of all Guaranteed Obligations when the same shall become due,

whether at stated maturity, by required prepayment, declaration, acceleration, demand or otherwise (including amounts that would become due but for the operation of the automatic stay under Section 362(a) of Title 11 of the United States Code entitled "Bankruptcy" as now and hereafter in effect, or any successor statute (the "**Bankruptcy Code**")). The term "**Guaranteed Obligations**" means:

(a) any and all Obligations of the Borrower, in each case now or hereafter made, incurred or created, whether absolute or contingent, liquidated or unliquidated, whether due or not due, and however arising under or in connection with any Loan Documents or Specified Cash Management Agreements, including those arising under successive borrowing transactions under the Credit Agreement which shall either continue the Obligations of the Borrower or from time to time renew them after they have been satisfied and including interest which, but for the filing of a petition in bankruptcy with respect to the Borrower, would have accrued on any Guaranteed Obligations, whether or not a claim is allowed against the Borrower for such interest in the related bankruptcy proceeding;

(b) any and all Obligations of any other Loan Party, in each case now or hereafter made, incurred or created, whether absolute or contingent, liquidated or unliquidated, whether due or not due, and however arising under or in connection with any Loan Documents or Specified Cash Management Agreements, including those arising under successive borrowing transactions under the Credit Agreement which shall either continue the Obligations of a Loan Party or from time to time renew them after they have been satisfied and including interest which, but for the filing of a petition in bankruptcy with respect to any Loan Party, would have accrued on any Guaranteed Obligations, whether or not a claim is allowed against a Loan Party for such interest in the related bankruptcy proceeding; and

(c) those expenses set forth in Section 2.8.

Notwithstanding any provision hereof or in any other Loan Document to the contrary, (i) in no event will the Guaranteed Obligations include any Excluded Swap Obligations and (ii) the Guaranteed Obligations, as it applies to the Borrower in its capacity as Guarantor hereunder, shall exclude any Direct Borrower Obligations of the Borrower.

2.2 Limitation on Amount Guaranteed; Contribution by Guarantors.

(a) Anything contained in this Guaranty to the contrary notwithstanding, if any Fraudulent Transfer Law is determined by a court of competent jurisdiction to be applicable to the obligations of any Guarantor under this Guaranty, such obligations of such Guarantor hereunder shall be limited to a maximum aggregate amount equal to the largest amount that would not render its obligations hereunder subject to avoidance as a fraudulent transfer or conveyance under Section 548 of the Bankruptcy Code or any applicable provisions of comparable state law (collectively, the

"**Fraudulent Transfer Laws**"), in each case after giving effect to all other liabilities of such Guarantor, contingent or otherwise, that are relevant under the Fraudulent Transfer Laws (specifically excluding, however, any liabilities of such Guarantor (i) in respect of intercompany indebtedness to a Loan Party or other affiliates of a Loan Party to the extent that such indebtedness would be discharged in an amount equal to the amount paid by such Guarantor hereunder and (ii) under any guaranty of other Indebtedness (other than the Subsidiary Guaranty (as defined in the Term Loan Agreement)) which guaranty contains a limitation as to maximum amount similar to that set forth in this Section 2.2(a), pursuant to which the liability of such Guarantor hereunder is included in the liabilities taken into account in determining such maximum amount) and after giving effect as assets to the value (as determined under the applicable provisions of the Fraudulent Transfer Laws) of any rights to subrogation, reimbursement, indemnification or contribution of such Guarantor pursuant to applicable law or pursuant to the terms of any agreement (including any such right of contribution under Section 2.2(b)). Each Guarantor acknowledges and agrees that, to the extent not prohibited by applicable law, (i) such Guarantor (as opposed to its creditors, representatives of creditors or bankruptcy trustee, including such Guarantor in its capacity as debtor in possession exercising any powers of a bankruptcy trustee) has no personal right under Fraudulent Transfer Laws to reduce, or request any judicial relief that has the effect of reducing, the amount of its liability under this Guaranty, (ii) such Guarantor (as opposed to its creditors, representatives of creditors or bankruptcy trustee, including such Guarantor in its capacity as debtor in possession exercising any powers of a bankruptcy trustee) has no personal right to enforce the limitation set forth in this Section 2.2(a) or to reduce, or request judicial relief reducing, the amount of its liability under this Guaranty, and (iii) the limitation set forth in this Section 2.2(a) may be enforced only to the extent required under Fraudulent Transfer Laws in order for the obligations of such Guarantor under this Guaranty to be enforceable under Fraudulent Transfer Laws and only by or for the benefit of a creditor, representative of creditors or bankruptcy trustee of such Guarantor or other Person entitled, under such laws, to enforce the provisions thereof.

(b) The Guarantors under this Guaranty together desire to allocate among themselves, in a fair and equitable manner, their obligations arising under this Guaranty. Accordingly, in the event any payment or distribution is made at any time by any Guarantor under this Guaranty (a "**Funding Guarantor**") that exceeds its Fair Share as of such date, that Funding Guarantor shall be entitled to a contribution from each of the other Guarantors in the amount of such other Guarantor's Fair Share Shortfall as of such date, with the result that all such contributions will cause each Guarantor's Aggregate Payments to equal its Fair Share as of such date. "**Fair Share**" means, with respect to a Guarantor as of any date of determination, an amount equal to (i) the ratio of (A) the Adjusted Maximum Amount with respect to such Guarantor to (B) the aggregate of the Adjusted Maximum Amounts with respect to all Guarantors multiplied by (ii) the aggregate amount paid or distributed on or before such date by all Funding Guarantors under this Guaranty in respect of the Guaranteed Obligations. "**Fair Share Shortfall**" means, with respect

to a Guarantor as of any date of determination, the excess, if any, of the Fair Share of such Guarantor over the Aggregate Payments of such Guarantor. "**Adjusted Maximum Amount**" means, with respect to a Guarantor as of any date of determination, the maximum aggregate amount of the obligations of such Guarantor under this Guaranty, determined as of such date, in accordance with Section 2.2(a); provided that, solely for purposes of calculating the "Adjusted Maximum Amount" with respect to any Guarantor for purposes of this Section 2.2(b), any assets or liabilities of such Guarantor arising by virtue of any rights to subrogation, reimbursement or indemnification or any rights to or obligations of contribution hereunder shall not be considered as assets or liabilities of such Guarantor. "**Aggregate Payments**" means, with respect to a Guarantor as of any date of determination, an amount equal to (i) the aggregate amount of all payments and distributions made on or before such date by such Guarantor in respect of this Guaranty (including in respect of this Section 2.2(b)) minus (ii) the aggregate amount of all payments received on or before such date by such Guarantor from the other Guarantors as contributions under this Section 2.2(b). The amounts payable as contributions hereunder shall be determined as of the date on which the related payment or distribution is made by the applicable Funding Guarantor. The allocation among Guarantors of their obligations as set forth in this Section 2.2(b) shall not be construed in any way to limit the liability of any Guarantor hereunder. Any other Guarantor is a third party beneficiary to the contribution agreement set forth in this Section 2.2(b), which shall not be construed in any way to limit the liability of any Guarantor hereunder.

2.3 Payment by Guarantors; Application of Payments. Subject to the provisions of Section 2.2(a), the Guarantors hereby jointly and severally agree, in furtherance of the foregoing and not in limitation of any other right which any Secured Party may have at law or in equity against any Guarantor by virtue hereof, that upon the failure of any Loan Party to pay any of the Guaranteed Obligations when and as the same shall become due, whether at stated maturity, by required prepayment, declaration, acceleration, demand or otherwise (including amounts that would become due but for the operation of the automatic stay under Section 362(a) of the Bankruptcy Code), the Guarantors will upon demand (or automatically upon the occurrence of any Event of Default under Section 7.01(h) or Section 7.01(i) of the Credit Agreement) pay, or cause to be paid, in cash, to the Administrative Agent for the ratable benefit of the Secured Parties, an amount equal to the sum of the unpaid principal amount of all Guaranteed Obligations then due as aforesaid, accrued and unpaid interest on such Guaranteed Obligations (including interest which, but for the filing of a petition in bankruptcy with respect to such Loan Party, would have accrued on such Guaranteed Obligations, whether or not a claim is allowed against such Loan Party for such interest in the related bankruptcy proceeding) and all other Guaranteed Obligations then owed to the Secured Parties as aforesaid. All such payments shall be applied promptly from time to time by the Administrative Agent as set forth in the Credit Agreement. For the avoidance of doubt, notwithstanding any other provision of any Loan Document to the contrary, no such payment received from any Guarantor that is not a

Qualified ECP Guarantor shall be applied by the Administrative Agent or any other Secured Party to the payment of any Excluded Swap Obligations.

2.4 Liability of Guarantors Absolute. Each Guarantor agrees that its obligations hereunder are irrevocable, absolute, independent and unconditional and shall not be affected by any circumstance which constitutes a legal or equitable discharge of a guarantor or surety other than payment in full of the Guaranteed Obligations. In furtherance of the foregoing and without limiting the generality thereof, each Guarantor agrees as follows:

(a) This Guaranty is a guaranty of payment when due and not of collectability.

(b) The obligations of each Guarantor hereunder are independent of the obligations of the other Loan Parties hereunder, the Loan Parties under the other Loan Documents and the Specified Cash Management Agreements and the obligations of any other guarantor (including any other Guarantor) of the obligations of the Loan Parties under the other Loan Documents and the Specified Cash Management Agreements, and a separate action or actions may be brought and prosecuted against such Guarantor whether or not any action is brought against the applicable Loan Party or any of such other guarantors and whether or not the applicable Loan Party is joined in any such action or actions.

(c) Payment by any Guarantor of a portion, but not all, of the Guaranteed Obligations shall in no way limit, affect, modify or abridge any Guarantor's liability for any portion of the Guaranteed Obligations which has not been paid. Without limiting the generality of the foregoing, if the Administrative Agent is awarded a judgment in any suit brought to enforce any Guarantor's covenant to pay a portion of the Guaranteed Obligations, such judgment shall not be deemed to release such Guarantor from its covenant to pay the portion of the Guaranteed Obligations that is not the subject of such suit, and such judgment shall not, except to the extent satisfied by such Guarantor, limit, affect, modify or abridge any other Guarantor's liability hereunder in respect of the Guaranteed Obligations.

(d) Any Secured Party, upon such terms as it deems appropriate, without notice or demand and without affecting the validity or enforceability of this Guaranty or giving rise to any reduction, limitation, impairment, discharge or termination of any Guarantor's liability hereunder, from time to time may (i) renew, extend, accelerate, increase the rate of principal or interest on, or otherwise change the time, place, manner or terms of payment of the Guaranteed Obligations; (ii) settle, compromise, release or discharge, or accept or refuse any offer of performance with respect to, or substitutions for, the Guaranteed Obligations or any agreement relating thereto and/or subordinate the payment of the same to the payment of any other obligations; (iii) request and accept other guaranties of the Guaranteed Obligations and take and hold security for the payment of this Guaranty or the Guaranteed Obligations; (iv) release, surrender, exchange, substitute,

compromise, settle, rescind, waive, alter, subordinate or modify, with or without consideration, any security for payment of the Guaranteed Obligations, any other guaranties of the Guaranteed Obligations, or any other obligation of any Person (including any other Guarantor) with respect to the Guaranteed Obligations; (v) enforce and apply any security now or hereafter held by or for the benefit of such Secured Party in respect of this Guaranty or the Guaranteed Obligations and direct the order or manner of sale thereof, or exercise any other right or remedy that such Secured Party may have against any such security, in each case as such Secured Party in its discretion may determine consistent with the Loan Documents or the applicable Specified Cash Management Agreement and any applicable security agreement, including foreclosure on any such security pursuant to one or more judicial or nonjudicial sales, whether or not every aspect of any such sale is commercially reasonable, and even though such action operates to impair or extinguish any right of reimbursement or subrogation or other right or remedy of any Guarantor against any Loan Party or any security for the Guaranteed Obligations; and (vi) exercise any other rights available to it under the Loan Documents or the Specified Cash Management Agreements.

(e) This Guaranty and the obligations of the Guarantors hereunder shall be valid and enforceable and shall not be subject to any reduction, limitation, impairment, discharge or termination for any reason (other than payment in full of the Guaranteed Obligations), including the occurrence of any of the following, whether or not any Guarantor shall have had notice or knowledge of any of them: (i) any failure or omission to assert or enforce, or agreement or election not to assert or enforce, or the stay or enjoining, by order of court, by operation of law or otherwise, of the exercise or enforcement of, any claim or demand or any right, power or remedy (whether arising under the Loan Documents, the Specified Cash Management Agreements, at law, in equity or otherwise) with respect to the Guaranteed Obligations or any agreement relating thereto, or with respect to any other guaranty of or security for the payment of the Guaranteed Obligations; (ii) any rescission, waiver, amendment or modification of, or any consent to or departure from, any of the terms or provisions (including provisions relating to events of default) of any of the Loan Documents, any of the Specified Cash Management Agreements or any agreement or instrument executed pursuant thereto, or of any other guaranty or security for the Guaranteed Obligations, in each case whether or not in accordance with the terms of such Loan Document, such Specified Cash Management Agreements or any agreement or instrument executed pursuant thereto or any agreement relating to such other guaranty or security; (iii) the Guaranteed Obligations, or any agreement relating thereto, at any time being found to be illegal, invalid or unenforceable in any respect; (iv) the application of payments received from any source (other than payments received pursuant to the Loan Documents or from the proceeds of any security for the Guaranteed Obligations, except to the extent such security also serves as collateral for indebtedness other than the Guaranteed Obligations) to the payment of indebtedness other than the Guaranteed Obligations, even though any Secured Party might have elected to apply such payment to any part or all of the Guaranteed Obligations; (v) any Secured Party's consent to the change, reorganization or termination of the

corporate structure or existence of any Loan Party or any of their respective Subsidiaries and to any corresponding restructuring of the Guaranteed Obligations; (vi) any failure to perfect or continue perfection of a security interest in any collateral which secures any of the Guaranteed Obligations; (vii) any defenses, set-offs or counterclaims which any Loan Party may allege or assert against any Secured Party in respect of the Guaranteed Obligations (other than, subject to Section 2.13(c), the full payment in cash thereof), including failure of consideration, breach of warranty, statute of frauds, statute of limitations, accord and satisfaction and usury; and (viii) any other act or thing or omission, or delay to do any other act or thing, which may or might in any manner or to any extent vary the risk of any Guarantor as an obligor in respect of the Guaranteed Obligations.

2.5 Waivers by Guarantors. Each Guarantor hereby waives, for the benefit of the Secured Parties, to the extent permitted by applicable law:

(a) any right to require any Secured Party, as a condition of payment or performance by such Guarantor, to (i) proceed against any Loan Party, any other guarantor (including any other Guarantor) of the Guaranteed Obligations or any other Person, (ii) proceed against or exhaust any security held from any Loan Party, any such other guarantor or any other Person, (iii) proceed against or have resort to any balance of any deposit account or credit on the books of any Secured Party in favor of any Loan Party, any such other guarantor or any other Person, or (iv) pursue any other remedy in the power of any Secured Party whatsoever;

(b) any defense arising by reason of the incapacity, lack of authority or any disability or other defense of any Loan Party including any defense based on or arising out of the lack of validity or the unenforceability of the Guaranteed Obligations or any agreement or instrument relating thereto or by reason of the cessation of the liability of any Loan Party from any cause other than payment in full of the Guaranteed Obligations;

(c) any defense based upon any statute or rule of law which provides that the obligation of a surety must be neither larger in amount nor in other respects more burdensome than that of the principal;

(d) any defense based upon any Secured Party's errors or omissions in the administration of the Guaranteed Obligations, except behavior which amounts to bad faith or willful misconduct;

(e) (i) any principles or provisions of law, statutory or otherwise, which are or might be in conflict with the terms of this Guaranty and any legal or equitable discharge of such Guarantor's obligations hereunder, (ii) the benefit of any statute of limitations affecting such Guarantor's liability hereunder or the enforcement hereof, (iii) any rights to set-offs, recoupments and counterclaims, and (iv) promptness, diligence and any requirement that any Secured Party protect, secure, perfect or insure any security interest or lien or any property subject thereto;

(f) notices, demands, presentments, protests, notices of protest, notices of dishonor and notices of any action or inaction, including acceptance of this Guaranty, notices of default under the Loan Documents, the Specified Cash Management Agreements or any agreement or instrument related thereto, notices of any renewal, extension or modification of the Guaranteed Obligations or any agreement related thereto, notices of any extension of credit to any Loan Party and notices of any of the matters referred to in Section 2.4 and any right to consent to any thereof;

(g) any defenses (other than the defense of payment) or benefits that may be derived from or afforded by law which limit the liability of or exonerate guarantors or sureties, or which may conflict with the terms of this Guaranty;

(h) any defense based upon any Secured Party's failure to mitigate damages; and

(i) all rights to insist upon, plead or in any manner claim or take the benefit or advantage of any appraisal, valuation, stay, extension, marshaling of assets, redemption or similar law, or exemption, whether now or hereafter in force, which may delay, prevent or otherwise affect the performance by any Guarantor of its obligations under, or the enforcement by any Secured Party of, this Guaranty.

2.6 Guarantors' Rights of Subrogation, Contribution, Etc. Each Guarantor hereby waives the right to exercise at any time prior to the Termination Date any claim, right or remedy, direct or indirect, that such Guarantor now has or may hereafter have against any Loan Party or any of its assets in connection with this Guaranty or the performance by such Guarantor of its obligations hereunder, in each case whether such claim, right or remedy arises in equity, under contract, by statute, under common law or otherwise and including (a) any right of subrogation, reimbursement or indemnification that such Guarantor now has or may hereafter have against any Loan Party; (b) any right to enforce, or to participate in, any claim, right or remedy that any Secured Party now has or may hereafter have against any Loan Party; and (c) any benefit of, and any right to participate in, any collateral or security now or hereafter held by any Secured Party. In addition, until the Termination Date, each Guarantor shall withhold exercise of any right of contribution such Guarantor may have against any other guarantor (including any other Guarantor) of the Guaranteed Obligations (including any such right of contribution under Section 2.2(b)). The foregoing agreements of the Guarantors set forth in this Section 2.6 shall remain operative and in full force and effect until the Termination Date regardless of the termination of this Guaranty. Each Guarantor further agrees that, to the extent the waiver or agreement to withhold the exercise of its rights of subrogation, reimbursement, indemnification and contribution as set forth herein is found by a court of competent jurisdiction to be void or voidable for any reason, any rights of subrogation, reimbursement or indemnification such Guarantor may have against any Loan Party or against any collateral or security, and any rights of contribution such Guarantor may have against any such other guarantor, shall be junior and subordinate to any rights any Secured Party may have against

any Loan Party, to all right, title and interest any Secured Party may have in any such collateral or security, and to any right any Secured Party may have against such other guarantor. If any amount shall be paid to any Guarantor on account of any such subrogation, reimbursement, indemnification or contribution rights at any time prior to the Termination Date, such amount shall be held in trust for the Administrative Agent on behalf of the Secured Parties and shall forthwith be paid over to the Administrative Agent for the benefit of the Secured Parties to be credited and applied against the Guaranteed Obligations, whether matured or unmatured, in accordance with the terms hereof.

2.7 Subordination of Other Obligations. Any Indebtedness of any Guarantor now or hereafter held by any other Guarantor (the "**Obligee Guarantor**") is hereby subordinated in right of payment to the Guaranteed Obligations during the term of this Guaranty, and any such Indebtedness collected or received by the Obligee Guarantor after an Event of Default has occurred and is continuing shall be held in trust for the Administrative Agent on behalf of the Secured Parties and shall forthwith be paid over to the Administrative Agent for the benefit of the Secured Parties to be credited and applied against the Guaranteed Obligations but without affecting, impairing or limiting in any manner the liability of the Obligee Guarantor under any other provision of this Guaranty.

2.8 Expenses. The Guarantors jointly and severally agree to pay, or cause to be paid, on demand, and to save the Secured Parties harmless against liability for, any and all documented costs and expenses (including fees, disbursements and other charges of counsel) incurred or expended by any Secured Party in connection with the enforcement of or preservation of any rights under this Guaranty, all in accordance with the terms of Section 9.05 of the Credit Agreement, the provisions of which are incorporated herein, *mutatis mutandis*.

2.9 Continuing Guaranty. This Guaranty is a continuing guaranty and shall remain in effect until the Termination Date; provided that, as to any Guarantor, this Guaranty may be terminated prior to the Termination Date pursuant to Section 2.16. Each Guarantor hereby irrevocably waives any right to revoke this Guaranty as to future transactions giving rise to any Guaranteed Obligations.

2.10 Authority of Guarantors. It is not necessary for any Secured Party to inquire into the capacity or powers of any Guarantor or any other Loan Party or the officers, directors or any agents acting or purporting to act on behalf of any of them.

2.11 Financial Condition of Loan Parties. Any Loans or other extensions of credit may be granted to the Loan Parties or continued from time to time, and any Specified Cash Management Agreements may be entered into from time to time, in each case without notice to or authorization from any Guarantor regardless of the financial or other condition of the applicable Loan Party at the time of any such grant or continuation or at the time such Specified Cash Management Agreement is entered into, as the case may be. No Secured Party shall have any obligation to disclose or discuss

with any Guarantor its assessment, or any Guarantor's assessment, of the financial condition of any Loan Party. Each Guarantor has adequate means to obtain information from each Loan Party on a continuing basis concerning the financial condition of each Loan Party and their respective ability to perform its obligations under the Loan Documents and Specified Cash Management Agreements, and each Guarantor assumes the responsibility for being and keeping informed of the financial condition of each Loan Party and of all circumstances bearing upon the risk of nonpayment of the Guaranteed Obligations. Each Guarantor hereby waives and relinquishes any duty on the part of any Secured Party to disclose any matter, fact or thing relating to the business, operations or conditions of any Loan Party now known or hereafter known by any Secured Party.

2.12 Rights Cumulative. The rights, powers and remedies given to the Secured Parties by this Guaranty are cumulative and shall be in addition to and independent of all rights, powers and remedies given to the Secured Parties by virtue of any statute or rule of law or in any of the other Loan Documents, any of the Specified Cash Management Agreements, or any agreement between any Guarantor and any Secured Party or Secured Parties or between any Loan Party and any Secured Party or Secured Parties. Any forbearance or failure to exercise, and any delay by any Secured Party in exercising, any right, power or remedy hereunder shall not impair any such right, power or remedy or be construed to be a waiver thereof, nor shall it preclude the further exercise of any such right, power or remedy.

2.13 Bankruptcy; Post-Petition Interest; Reinstatement of Guaranty.

(a) So long as any Guaranteed Obligations have not been paid in full, no Guarantor shall, without the prior written consent of the Administrative Agent acting pursuant to the instructions of the Required Lenders, commence or join with any other Person in commencing any bankruptcy, reorganization, insolvency or similar proceedings under Debtor Relief Laws against any Loan Party. The obligations of the Guarantors under this Guaranty shall not be reduced, limited, impaired, discharged, deferred, suspended or terminated by any proceeding, voluntary or involuntary, involving the bankruptcy, insolvency, receivership, reorganization, liquidation, arrangement or similar proceedings under Debtor Relief Laws of any Loan Party or by any defense which any Loan Party may have by reason of the order, decree or decision of any court or administrative body resulting from any such proceeding.

(a) Each Guarantor acknowledges and agrees that any interest on any portion of the Guaranteed Obligations which accrues after the commencement of any proceeding referred to in clause (a) above (or, if interest on any portion of the Guaranteed Obligations ceases to accrue by operation of law by reason of the commencement of said proceeding, such interest as would have accrued on such portion of the Guaranteed Obligations if said proceedings had not been commenced) shall be included in the Guaranteed Obligations because it is the intention of the Guarantors and the Secured Parties that the Guaranteed Obligations should be determined without regard to any

rule of law or order which may relieve any Loan Party of any portion of such Guaranteed Obligations. The Guarantors will permit any trustee in bankruptcy, receiver, debtor in possession, assignee for the benefit of creditors or similar person under Debtor Relief Laws to pay the Administrative Agent, or allow the claim of the Administrative Agent in respect of, any such interest accruing after the date on which such proceeding is commenced.

(b) In the event that all or any portion of the Guaranteed Obligations are paid by the Borrower or any other Loan Party, the obligations of the Guarantors hereunder shall continue and remain in full force and effect or be reinstated, as the case may be, in the event that all or any part of such payment(s) are rescinded or recovered directly or indirectly from any Secured Party as a preference, fraudulent transfer or otherwise, and any such payments which are so rescinded or recovered shall constitute Guaranteed Obligations for all purposes under this Guaranty.

2.14 Notice of Events. Promptly upon any Guarantor obtaining knowledge thereof, such Guarantor shall give the Administrative Agent written notice of any condition or event which has resulted in (a) a material adverse change in the financial condition of any Guarantor or (b) a Default or Event of Default under the Credit Agreement.

2.15 Set Off. In addition to any other rights any Secured Party may have under law or in equity, if any amount shall at any time be due and owing by any Guarantor to any Secured Party under this Guaranty, such Secured Party is authorized at any time or from time to time, without notice (any such notice being hereby expressly waived), to set off and to appropriate and to apply any and all deposits (general or special, including indebtedness evidenced by certificates of deposit, whether matured or unmatured and any other indebtedness of such Secured Party owing to such Guarantor) and any other property of such Guarantor held by any Secured Party to or for the credit or the account of such Guarantor against and on account of the Guaranteed Obligations and liabilities of such Guarantor to any Secured Party under this Guaranty; provided, in the event that any Defaulting Lender shall exercise any such right of setoff, (x) all amounts so set off shall be paid over immediately to the Administrative Agent for further application in accordance with the provisions of Section 2.21 of the Credit Agreement and, pending such payment, shall be segregated by such Defaulting Lender from its other funds and deemed held in trust for the benefit of the Administrative Agent, the Issuing Bank and the Lenders, and (y) the Defaulting Lender shall provide promptly to the Administrative Agent a statement describing in reasonable detail the Obligations owing to such Defaulting Lender as to which it exercised such right of setoff. Each Secured Party agrees to notify the Borrower and the Administrative Agent promptly after any such setoff and application (although the failure to provide any such notice shall not affect any such setoff or result in any liability to such Secured Party).

2.16 Discharge of Guaranty Upon Sale of Guarantor. If (a) all of the ownership interests of any Guarantor or any of its successors in interest under this Guaranty shall be sold or

otherwise disposed of (including by merger or consolidation) in an Asset Sale permitted under the Credit Agreement (other than a sale to the Borrower or any other Loan Party), or (b) any Guarantor shall otherwise be released from this Guaranty in accordance with the Loan Documents or with the consent of the Lenders pursuant to Section 9.08 of the Credit Agreement, the Guaranty of such Guarantor or such successor in interest, as the case may be, hereunder shall automatically be discharged and released without any further action by any Secured Party or any other Person effective as of the time of such Asset Sale or other release.

2.17 Representations and Warranties. Each Guarantor acknowledges and agrees that it is familiar with the Credit Agreement and the representations and warranties applicable to it thereunder. The representations and warranties contained in Article 3 of the Credit Agreement, insofar as the representations and warranties contained therein are applicable to any Guarantor and its properties, are true and correct in all material respects (or, to the extent a representation and warranty contains a materiality or Material Adverse Effect qualification, in all respects), and shall be true and correct in all material respects (or, to the extent a representation and warranty contains a materiality or Material Adverse Effect qualification, in all respects) on each day on which such representations and warranties will be repeated in accordance with the Loan Documents (except to the extent they relate to any earlier date in which case they shall be true and correct in all material respects (or, to the extent a representation and warranty contains a materiality or Material Adverse Effect qualification, in all respects) as of such earlier date), each representation and warranty set forth in Article 3 of the Credit Agreement (insofar as applicable as aforesaid) and all other terms of the Credit Agreement to which reference is made therein, together with all related definitions and ancillary provisions, being hereby incorporated into this Guaranty by this reference as though specifically set forth in this Section 2.17.

2.18 Covenants. Each Guarantor acknowledges and agrees that it is familiar with the Credit Agreement and the covenants applicable to it thereunder. Each Guarantor covenants and agrees that, at all times prior to the Termination Date, it will perform, comply with and be bound by all of the agreements, covenants and obligations contained in Articles 5 and 6 of the Credit Agreement, which are applicable to such Guarantor, each such agreement, covenant and obligation contained in Articles 5 and 6 of the Credit Agreement, together with all related definitions and ancillary provisions, being hereby incorporated into this Guaranty by this reference as though specifically set forth in this Section 2.18.

SECTION 3. MISCELLANEOUS

3.1 Survival of Warranties. All agreements, representations and warranties made herein shall survive the execution and delivery of this Guaranty and the other Loan Documents and any increase in the Commitments under the Credit Agreement.

3.2 Notices. Any communications between the Administrative Agent and any Guarantor and any notices or requests provided herein to be given may be given in accordance with Section 9.01 of the Credit Agreement, to each party hereto at its address set forth in the Credit Agreement, on the signature pages hereof or to such other addresses as each such party may in writing hereafter indicate. Any notice, request or demand to or upon the Administrative Agent or any Guarantor shall not be effective until received.

3.3 Severability. In case any provision in or obligation under this Guaranty shall be invalid, illegal or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations, or of such provision or obligation in any other jurisdiction, shall not in any way be affected or impaired thereby.

3.4 Amendments and Waivers. Subject to the last sentence of Section 8.02 of the Credit Agreement, no amendment, modification, termination or waiver of any provision of this Guaranty, and no consent to any departure by any Guarantor therefrom, shall in any event be effective without the written concurrence of (i) the Required Lenders or (ii) the Administrative Agent (at the direction of the Required Lenders) and, in the case of any such amendment or modification, each Guarantor. Any such waiver or consent shall be effective only in the specific instance and for the specific purpose for which it was given.

3.5 Headings. Section headings in this Guaranty are included herein for convenience of reference only and shall not constitute a part of this Guaranty for any other purpose or be given any substantive effect.

3.6 Applicable Law; Rules of Construction. THIS GUARANTY AND THE RIGHTS AND OBLIGATIONS OF THE GUARANTORS AND THE SECURED PARTIES HEREUNDER SHALL BE CONSTRUED IN ACCORDANCE WITH, AND GOVERNED BY, THE LAWS OF THE STATE OF NEW YORK (WITHOUT REGARD TO CONFLICT OF LAWS PROVISIONS THAT WOULD RESULT IN THE APPLICATION OF LAWS OTHER THAN THE LAWS OF THE STATE OF NEW YORK).

3.7 Successors and Assigns. This Guaranty is a continuing guaranty and shall be binding upon each Guarantor and its respective successors and assigns. This Guaranty shall inure to the benefit of the Secured Parties and their respective successors and assigns. No Guarantor shall assign this Guaranty or any of the rights or obligations of such Guarantor hereunder without the prior written consent of the Administrative Agent (acting with the consent of the requisite percentage of Lenders pursuant to the Credit Agreement). Any Secured Party may, without notice or consent, assign its interest in this Guaranty in whole or in part, provided that any assignee shall be a Secured Party under the Credit Agreement. The terms and provisions of this Guaranty shall inure to the benefit of any transferee or assignee of any Commitments or Loan, and in the event of such transfer

or assignment the rights and privileges herein conferred upon such Secured Party shall automatically extend to and be vested in such transferee or assignee, all subject to the terms and conditions hereof.

3.8 Consent to Jurisdiction.

(a) Each Guarantor hereby irrevocably and unconditionally submits, for itself and its property, to the exclusive jurisdiction of any New York State court or Federal court of the United States of America sitting in New York City, Borough of Manhattan, and any appellate court from any thereof, in any action or proceeding arising out of or relating to this Guaranty, the other Loan Documents or the Specified Cash Management Agreements or for recognition or enforcement of any judgment, and each Guarantor hereby irrevocably and unconditionally agrees that all claims in respect of any such action or proceeding shall be heard and determined in such New York State court or, to the extent permitted by law, in such Federal court. Each Guarantor agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Nothing in this Guaranty, however, shall affect any right that any Secured Party may otherwise have to bring any action or proceeding relating to this Guaranty, the other Loan Documents or the Specified Cash Management Agreements against any Guarantor or their properties in the courts of any jurisdiction.

(b) Each Guarantor hereby irrevocably and unconditionally waives, to the fullest extent it may legally and effectively do so, any objection which it may now or hereafter have to the laying of venue of any action or proceeding arising out of or relating to this Guaranty, the other Loan Documents or the Specified Cash Management Agreements or for recognition or enforcement of any judgment in any New York State court or Federal court of the United States of America sitting in New York City, Borough of Manhattan or other New York jurisdiction as set forth in clause (a) above. Each Guarantor hereby irrevocably and unconditionally waives, to the fullest extent permitted by law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court.

(c) Each Guarantor irrevocably consents to service of process in the manner provided for notices in Section 3.2. Nothing in this Guaranty will affect the right of any party to this Guaranty to serve process in any other manner permitted by law.

(d) Each Guarantor shall maintain an agent to receive service of process in New York, New York at all times until the Termination Date.

3.9 Waiver of Jury Trial. EACH GUARANTOR HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS GUARANTY, THE OTHER LOAN DOCUMENTS OR THE SPECIFIED CASH MANAGEMENT

AGREEMENTS. EACH GUARANTOR (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY SECURED PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH SECURED PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT THE SECURED PARTIES HAVE BEEN INDUCED TO ENTER INTO THE LOAN DOCUMENTS AND THE SPECIFIED CASH MANAGEMENT AGREEMENTS TO WHICH THEY ARE A PARTY, BY, AMONG OTHER THINGS, THE WAIVERS AND CERTIFICATIONS IN THIS SECTION 3.9.

3.10 No Other Writing. This writing is intended by the Guarantors and the Secured Parties as the final expression of this Guaranty and is also intended as a complete and exclusive statement of the terms of their agreement with respect to the matters covered hereby. No course of dealing, course of performance or trade usage, and no parol evidence of any nature, shall be used to supplement or modify any terms of this Guaranty. There are no conditions to the full effectiveness of this Guaranty.

3.11 Further Assurances. At any time or from time to time, upon the request of the Administrative Agent, each Guarantor shall execute and deliver such further documents and do such other acts and things as the Administrative Agent may reasonably request in order to effect fully the purposes of this Guaranty.

3.12 Additional Guarantors. From time to time subsequent to the date hereof, additional Subsidiaries of the Borrower may become parties hereto, as additional Guarantors (each an "**Additional Guarantor**"), by executing a joinder agreement to this Guaranty in the form of Exhibit A attached hereto. Upon delivery of any such counterpart to the Administrative Agent, notice of which is hereby waived by each Guarantor, each such Additional Guarantor shall be a Guarantor and shall be as fully a party hereto as if such Additional Guarantor were an original signatory hereof. Each Guarantor expressly agrees that its obligations arising hereunder shall not be affected or diminished by the addition or release of any other Guarantor hereunder, nor by any election of the Administrative Agent not to cause any Subsidiary of the Borrower to become an Additional Guarantor hereunder. This Guaranty shall be fully effective as to any Guarantor that is or becomes a party hereto regardless of whether any other Person becomes or fails to become or ceases to be a Guarantor hereunder.

3.13 Counterparts; Effectiveness. This Guaranty may be executed in counterparts (and by different parties hereto on different counterparts), each of which shall be deemed an original but all of which when taken together shall constitute a single contract. Delivery of an executed signature page to this Guaranty by facsimile transmission, "pdf" or similar electronic copy shall be as effective as delivery of a manually signed counterpart of this Guaranty. Any party hereto may request an original counterpart of any party delivering such electronic counterpart. A set of the copies of this

Guaranty signed by all the parties shall be lodged with the Borrower and the Administrative Agent. This Guaranty shall become effective as to each Guarantor upon the execution of a counterpart hereof by such Guarantor (whether or not a counterpart hereof shall have been executed by any other Guarantor) and receipt by the Administrative Agent of written or telephonic notification of such execution and authorization of delivery thereof.

3.14 Administrative Agent as Agent.

(a) The Administrative Agent has been appointed to act as Administrative Agent hereunder by the Secured Parties. The Administrative Agent shall be obligated, and shall have the right hereunder, to make demands, to give notices, to exercise or refrain from exercising any rights, and to take or refrain from taking any action, solely in accordance with this Guaranty and the Loan Documents; provided that the Administrative Agent shall exercise, or refrain from exercising, any remedies hereunder in accordance with the instructions of the Required Lenders. In furtherance of the foregoing provisions of this Section 3.14, each Secured Party, by its acceptance of the benefits hereof, agrees that, except to the extent specifically provided herein, it shall have no right individually to enforce this Guaranty, it being understood and agreed by such that all rights and remedies hereunder may be exercised solely by the Administrative Agent for the benefit of the Secured Parties in accordance with the terms of this Section 3.14.

(b) The Administrative Agent shall at all times be the same Person that is the Administrative Agent under the Credit Agreement. Written notice of resignation by the Administrative Agent pursuant to the terms of the Credit Agreement shall also constitute notice of resignation as the Administrative Agent under this Guaranty; removal of the Administrative Agent pursuant to the terms of the Credit Agreement shall also constitute removal as the Administrative Agent under this Guaranty; and appointment of a successor Administrative Agent pursuant to the terms of the Credit Agreement shall also constitute appointment of a successor Administrative Agent under this Guaranty. Upon the acceptance of any appointment as the Administrative Agent under the terms of the Credit Agreement by a successor Administrative Agent, that successor Administrative Agent shall thereupon succeed to and become vested with all the rights, powers, privileges and duties of the retiring or removed Administrative Agent under this Guaranty, and the retiring or removed Administrative Agent under this Guaranty shall promptly (i) transfer to such successor Administrative Agent all sums held hereunder, together with all records and other documents necessary or appropriate in connection with the performance of the duties of the successor Administrative Agent under this Guaranty, and (ii) take such other actions as may be necessary or appropriate in connection with the assignment to such successor Administrative Agent of the rights created hereunder, whereupon such retiring or removed Administrative Agent shall be discharged from its duties and obligations under this Guaranty. After any retiring or removed Administrative Agent's resignation or removal hereunder as the Administrative Agent, the provisions of this

Guaranty shall inure to its benefit as to any actions taken or omitted to be taken by it under this Guaranty while it was the Administrative Agent hereunder.

3.15 Gaming Authorities. The Administrative Agent acknowledges and agrees that its rights, remedies and powers under this Guaranty may be exercised only to the extent that (i) the exercise thereof does not violate any applicable laws, rules and regulations of the Gaming Authorities, including Gaming Laws, and (ii) all necessary approvals, licenses and consents from the Gaming Authorities required in connection therewith are obtained. Notwithstanding any other provision of this Guaranty, the Guarantors expressly authorize the Administrative Agent to cooperate with the applicable Gaming Authorities in connection with the administration of their regulatory jurisdiction over the Guarantors, including, without limitation, the provision of such documents or other information as may be requested by any such Gaming Authorities relating to the Administrative Agent, any Guarantor, or the Loan Documents. The parties acknowledge that the provisions of this Section 3.15 shall not be for the benefit of the Guarantors or any other Person.

3.16 Keepwell. Each Qualified ECP Guarantor hereby jointly and severally absolutely, unconditionally and irrevocably undertakes to provide such funds or other support as may be needed from time to time by each other Guarantor to honor all of its obligations under this Guaranty in respect of Swap Obligations (provided, however, that each Qualified ECP Guarantor shall only be liable under this Section 3.16 for the maximum amount of such liability that can be hereby incurred without rendering its obligations under this Section 3.16, or otherwise under this Guaranty, voidable under applicable law relating to fraudulent conveyance or fraudulent transfer, and not for any greater amount). The obligations of each Qualified ECP Guarantor under this Section shall remain in full force and effect until the payment in full of the Guaranteed Obligations. Each Qualified ECP Guarantor intends that this Section 3.16 constitute, and this Section 3.16 shall be deemed to constitute, a "keepwell, support, or other agreement" for the benefit of each other Guarantor for all purposes of Section 1a(18)(A)(v)(II) of the Commodity Exchange Act.

3.17 Intercreditor Agreement. All rights and remedies of the Administrative Agent hereunder are, as between the Administrative Agents (as defined in the Intercreditor Agreement) and the Collateral Agents (as defined in the Intercreditor Agreement), subject to the terms of the Intercreditor Agreement. This provision is for the benefit of, and may be enforced exclusively by, the Administrative Agents and the Collateral Agents only. For the avoidance of doubt, this provision is not for the benefit of any Guarantor and may not, under any circumstances, be enforced by any Guarantor.

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, each of the undersigned Guarantors has caused this Guaranty to be duly executed and delivered by its officer thereunto duly authorized as of the date first written above.

MONTREIGN OPERATING COMPANY, LLC,
a New York limited liability company

By: /s/ Joseph A. D'Amato
Name: Joseph A. D'Amato
Title: President

EMPIRE RESORTS REAL ESTATE I, LLC,
a New York limited liability company

By: /s/ Joseph A. D'Amato
Name: Joseph A. D'Amato
Title: President

EMPIRE RESORTS REAL ESTATE II, LLC,
a New York limited liability company

By: /s/ Joseph A. D'Amato
Name: Joseph A. D'Amato
Title: President

EXHIBIT 10.55

PLEDGE AND SECURITY AGREEMENT

among

MONTREIGN OPERATING COMPANY, LLC,
as Borrower and a Grantor

and

EACH OF THE OTHER GRANTORS PARTY HERETO,
as Grantors

and

FIFTH THIRD BANK
as Collateral Agent

dated as of January 24, 2017

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This PLEDGE AND SECURITY AGREEMENT, dated as of January 24, 2017 (this "**Agreement**"), is made by (a) MONTREIGN OPERATING COMPANY, LLC, a New York limited liability company (the "**Borrower**"), and (b) EACH OF THE OTHER PARTIES HERETO, whether as an original signatory hereto or as an Additional Grantor (each, a "**Grantor**" and, collectively, together with the Borrower, the "**Grantors**"), in favor of FIFTH THIRD BANK, in its capacity as collateral agent for the benefit of the Secured Parties (together with its successors and assigns in such capacity, the "**Collateral Agent**").

RECITALS

WHEREAS, reference is made to that certain Revolving Credit Agreement, dated as of the date hereof (as amended, amended and restated, supplemented or otherwise modified from time to time, the "**Credit Agreement**"), by and among the Borrower, the banks, financial institutions and other entities from time to time party thereto in the capacity of lenders and

Fifth Third Bank, in its capacity as administrative agent (together with its successors and assigns in such capacity, the "**Administrative Agent**");

WHEREAS, subject to the terms and conditions of the Credit Agreement, certain Grantors may enter into one or more Specified Cash Management Agreements with one or more counterparties to any such Specified Cash Management Agreements, respectively; and

WHEREAS, in consideration of the extensions of credit and other accommodations of the Secured Parties as set forth in the Credit Agreement and the Specified Cash Management Agreements, respectively, each Grantor has agreed to secure such Grantor's and the other Grantor's obligations under the Loan Documents and the Specified Cash Management Agreements as set forth herein.

AGREEMENT

NOW, THEREFORE, in consideration of the agreements, provisions and covenants herein contained, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, each Grantor and the Collateral Agent, for the benefit of the Secured Parties, hereby agree as follows:

SECTION 1.DEFINITIONS; GRANT OF SECURITY.

1.1 General Definitions. In this Agreement, the following terms shall have the following meanings:

"**Account Debtor**" shall mean each Person who is obligated on a Receivable or any Supporting Obligation related thereto as well as each Person that is an "account debtor" as defined in Article 9 of the UCC.

"**Accounts**" shall mean all "accounts" as defined in Article 9 of the UCC.

"**Additional Grantors**" shall have the meaning given in Section 5.2.

"**Administrative Agent**" shall have the meaning given in the recitals.

"**Agreement**" shall have the meaning given in the preamble.

"**Assigned Agreements**" shall mean all agreements and contracts (other than the Loan Documents and the Term Facility Documents) to which a Grantor is a party as of the date hereof, or to which a Grantor becomes a party after the date hereof, including, without limitation, each Material Contract, as each such agreement may be amended, amended and restated, supplemented or otherwise modified from time to time.

"**Bankruptcy Code**" shall mean Title 11 of the United States Code entitled "Bankruptcy" as now and hereafter in effect, or any successor statute.

"**Borrower**" shall have the meaning given in the preamble.

"**Cash Proceeds**" shall have the meaning given in Section 7.7.

"**Chattel Paper**" shall mean all "chattel paper" as defined in Article 9 of the UCC, including, without limitation, "electronic chattel paper" and "tangible chattel paper", as each term is defined in Article 9 of the UCC.

"**Collateral**" shall have the meaning given in Section 2.1.

"**Collateral Agent**" shall have the meaning given in the preamble.

"**Collateral Records**" shall mean all books, records, ledger cards, files, correspondence, customer lists, blueprints, technical specifications, manuals, computer printouts, tapes, disks and similar items that at any time evidence or contain information relating to any of the Collateral or are otherwise necessary or helpful in the collection thereof or realization thereupon.

"**Collateral Support**" shall mean all property (real or personal) assigned, hypothecated or otherwise securing any Collateral and shall include any security agreement or other agreement granting a lien or security interest in such real or personal property.

"**Commercial Tort Claims**" shall mean all "commercial tort claims" as defined in Article 9 of the UCC, including, without limitation, all commercial tort claims listed on Schedule 4.8.

"**Commodities Accounts**" (i) shall mean all "commodity accounts" as defined in Article 9 of the UCC and (ii) shall include, without limitation, all of the accounts listed on Schedule 4.4(E) under the heading "Commodities Accounts."

"**Commodity Exchange Act**" means the Commodity Exchange Act (7 U.S.C. § 1 et seq.), as amended from time to time, and any successor statute.

"**Copyright Licenses**" shall mean any and all agreements providing for the granting of any right in or to Copyrights (whether any Grantor is licensee or licensor thereunder) including, without limitation, each agreement referred to in Schedule 4.7(B).

"**Copyrights**" shall mean all United States and foreign copyrights (including community designs), including but not limited to copyrights in software and databases, whether registered or unregistered, and, with respect to any and all of the foregoing: (i) all registrations, recordings and applications therefor including, without limitation, the registrations and applications referred to in Schedule 4.7(A); (ii) all extensions and renewals, and any right to obtain any extensions and renewals, thereof; and (iii) all rights corresponding thereto throughout the world.

"**Credit Agreement**" shall have the meaning given in the recitals.

"**Deposit Accounts**" (i) shall mean all "deposit accounts" as defined in Article 9 of the UCC and (ii) shall include, without limitation, all of the accounts listed on Schedule 4.4(F) under the heading "Deposit Accounts".

"**Documents**" shall mean all "documents" as defined in Article 9 of the UCC.

"**Domain Names**" shall mean all Internet domain names and associated uniform resource locator addresses.

"**Equipment**" shall mean: (i) all "equipment" as defined in Article 9 of the UCC; (ii) all machinery, manufacturing equipment, data processing equipment, computers, office equipment, furnishings, furniture, appliances, fixtures and tools (in each case, regardless of whether characterized as equipment under the UCC); and (iii) all accessions or additions thereto, all parts thereof, whether or not at any time of determination incorporated or installed therein or attached thereto, and all replacements therefor, wherever located, now or hereafter existing, including any fixtures.

"Excluded Accounts" shall mean any Deposit Account or Securities Account holding (i) solely Cash and Cash Equivalents required pursuant to Gaming Laws or by Gaming Authorities to be deposited into Gaming Reserves to the extent that a security interest in such Deposit Account may not be granted under applicable Gaming Laws, (ii) solely Cash and Cash Equivalents held, pursuant to ordinary course operations, in payroll accounts of Persons providing the Loan

Parties payroll services, (iii) solely Cash and Cash Equivalents on deposit in 401(k) accounts, trust accounts and pension accounts established in the ordinary course of business, (iv) solely Cash or Cash Equivalents on deposit in segregated accounts for the benefit of the New York State Gaming Commission established in the ordinary course of business, (v) solely proceeds of Indebtedness (and proceeds of such proceeds) incurred pursuant to Section 6.01(j) of the Credit Agreement that have been pledged to the providers of such Indebtedness, (vi) solely Cash and Cash Equivalents held in escrow, fiduciary or cash collateral accounts in the ordinary course of business, (vii) solely Cash and Cash Equivalents in a zero balance account, (viii) solely Cash and Cash Equivalents that do not exceed, at any time for all such Deposit Accounts, $100,000 individually or $500,000 in the aggregate, (ix) solely Cash and Cash Equivalents securing obligations under Hedging Agreements permitted by Section 6.02(bb) of the Credit Agreement or (x) solely Cash and Cash Equivalents held for the purposes described in Section 5.15(b)(viii) of the Credit Agreement.

"**Excluded Swap Obligation**" shall mean, with respect to any Guarantor, (x) as it relates to all or a portion of the Guarantee of such Guarantor, any Swap Obligation if, and to the extent that, such Swap Obligation (or any Guarantee thereof) is or becomes illegal or unlawful under the Commodity Exchange Act or any rule, regulation or order of the Commodity Futures Trading Commission (or the application or official interpretation of any thereof) by virtue of such Guarantor's failure for any reason to constitute an "eligible contract participant" as defined in the Commodity Exchange Act and the regulations thereunder at the time the Guarantee of such Guarantor would otherwise become effective with respect to such Swap Obligation or (y) as it relates to all or a portion of the grant by such Guarantor of a security interest, any Swap Obligation if, and to the extent that, such Swap Obligation (or such security interest in respect thereof) is or becomes illegal or unlawful under the Commodity Exchange Act or any rule, regulation or order of the Commodity Futures Trading Commission (or the application or official interpretation of any thereof) by virtue of such Guarantor's failure for any reason to constitute an "eligible contract participant" as defined in the Commodity Exchange Act and the regulations thereunder at the time the security interest of such Guarantor would otherwise become effective with respect to such Swap Obligation. If a Swap Obligation arises under a master agreement governing more than one swap, such exclusion shall apply only to the portion of such Swap Obligation that is attributable to swaps for which such Guarantee or security interest is or becomes illegal or unlawful.

"**General Intangibles**" (i) shall mean all "general intangibles" as defined in Article 9 of the UCC, including all "payment intangibles" also as defined in Article 9 of the UCC and (ii) shall include, without limitation, all interest rate or currency protection or hedging arrangements, all tax refunds, all licenses, permits, concessions and authorizations, all Assigned Agreements and all Intellectual Property (in each case, regardless of whether characterized as general intangibles under the UCC).

"**Goods**" (i) shall mean all "goods" as defined in Article 9 of the UCC and (ii) shall include, without limitation, all Inventory and Equipment (in each case, regardless of whether characterized as goods under the UCC).

"**Grantors**" shall have the meaning given in the preamble.

"**Instruments**" shall mean all "instruments" as defined in Article 9 of the UCC.

"**Insurance**" shall mean (i) all insurance policies covering any or all of the Collateral (regardless of whether the Collateral Agent is the loss payee thereof) and (ii) all key man life insurance policies.

"**Intellectual Property**" shall mean, collectively, all rights, priorities and privileges with respect to intellectual property (including rights in such intellectual property that arise under any Intellectual Property Licenses), whether arising under United States, multinational or foreign laws or otherwise, including, without limitation, the Copyrights, the Patents, the Trademarks, the Domain Names, the Trade Secrets, and all rights to sue at law or in equity for any infringement or other impairment thereof, including the right to receive all proceeds and damages therefrom.

"**Intellectual Property Licenses**" shall mean, collectively, the Copyright Licenses, the Patent Licenses, the Trademark Licenses and the Trade Secret Licenses.

"**Inventory**" shall mean (i) all "inventory" as defined in Article 9 of the UCC and (ii) all goods held for sale or lease or to be furnished under contracts of service or so leased or furnished, all raw materials, work in process, finished goods, and materials used or consumed in the manufacture, packing, shipping, advertising, selling, leasing, furnishing or production of such inventory or otherwise used or consumed in any Grantor's business; all goods in which any Grantor has an interest in mass or a joint or other interest or right of any kind; and all goods which are returned to or repossessed by any Grantor, all computer programs embedded in any goods and all accessions thereto and products thereof (in each case, regardless of whether characterized as inventory under the UCC).

"**Investment Accounts**" shall mean the Securities Accounts, Commodities Accounts and Deposit Accounts.

"**Investment Related Property**" shall mean: (i) all "investment property" (as such term is defined in Article 9 of the UCC) and (ii) all of the following (regardless of whether classified as investment property under the UCC): all Pledged Equity Interests, all Pledged Debt, the Investment Accounts and all certificates of deposit.

"**Joinder Agreement**" shall mean a Joinder Agreement substantially in the form of Annex I.

"**Letter-of-Credit Right**" shall mean "letter-of-credit right" as defined in Article 9 of the UCC.

"**Money**" shall mean "money" as defined in the UCC.

"**Non-Assignable Contract**" shall mean any agreement, contract, permit, license or other similar government approval to which any Grantor is a party that by its terms purports to restrict or prevent the assignment or granting of a security interest therein (either by its terms or by any federal or state statutory prohibition or otherwise irrespective of whether such prohibition or restriction is enforceable under Section 9-406 through 409 of the UCC).

"**Patent Licenses**" shall mean all agreements providing for the granting of any right in or to Patents (whether any Grantor is licensee or licensor thereunder) including, without limitation, each agreement referred to in Schedule 4.7(D).

"**Patents**" shall mean all United States and foreign patents and certificates of invention, or similar industrial property rights, and applications for any of the foregoing, including, but not limited to: (i) each patent and patent application referred to in Schedule 4.7(C); (ii) all reissues, divisions, continuations, continuations-in-part, extensions, renewals, and reexaminations, and any right to obtain any reissues, divisions, continuations, continuations-in-part, extensions, renewals, and reexaminations, thereof; (iii) all rights corresponding thereto throughout the world; (iv) all inventions and improvements described therein; and (v) all claims, damages, and proceeds of suit arising therefrom.

"**Pledge Supplement**" shall mean any supplement to this Agreement in substantially the form of Exhibit A, together with all supplements to schedules attached thereto.

"**Pledged Debt**" shall mean all Indebtedness owed to any Grantor, including, without limitation, all Indebtedness described on Schedule 4.4(C) under the heading "Pledged Debt," issued by the obligors named therein, the instruments evidencing such Indebtedness, and all interest, cash, instruments and other property or proceeds from time to time received, receivable or otherwise distributed in respect of or in exchange for any or all of such Indebtedness.

"**Pledged Equity Interests**" shall mean all Pledged Stock, Pledged LLC Interests, Pledged Partnership Interests and Pledged Trust Interests.

"**Pledged LLC Interests**" shall mean all current and future interests in any limited liability company owned by any Grantor, including, without limitation, all limited liability company interests listed on Schedule 4.4(A) under the heading "Pledged LLC Interests," and the certificates, if any, representing such limited liability company interests and any interest of such Grantor on the books and records of such limited liability company or on the books and records of any securities intermediary pertaining to such interest and all dividends, distributions, cash, warrants, rights, options, instruments, securities and other property or proceeds from time to time received, receivable or otherwise distributed in respect of or in exchange for any or all of such limited liability company interests.

"**Pledged Partnership Interests**" shall mean all current and future interests in any general partnership, limited partnership, limited liability partnership or other partnership owned by any Grantor, including, without limitation, all partnership interests listed on Schedule 4.4(A) under the heading "Pledged Partnership Interests," and the certificates, if any, representing such partnership interests and any interest of such Grantor on the books and records of such partnership or on the books and records of any securities intermediary pertaining to such interest and all dividends, distributions, cash, warrants, rights, options, instruments, securities and other property or proceeds from time to time received, receivable or otherwise distributed in respect of or in exchange for any or all of such partnership interests.

"**Pledged Stock**" shall mean all current and future shares of capital stock owned by any Grantor, including, without limitation, all shares of capital stock described on Schedule 4.4(A) under the heading "Pledged Stock," and the certificates, if any, representing such shares and any interest of such Grantor on the books and records of the issuer of such shares or on the books and records of any securities intermediary pertaining to such shares, and all dividends, distributions, cash, warrants, rights, options, instruments, securities and other property or proceeds from time to time received, receivable or otherwise distributed in respect of or in exchange for any or all of such shares.

"**Pledged Trust Interests**" shall mean all current and future interests in any trust owned by any Grantor, including, without limitation, all trust interests listed on Schedule 4.4(A) under the heading "Pledged Trust Interests," and the certificates, if any, representing such trust interests and any interest of such Grantor on the books and records of such trust or on the books and records of any securities intermediary pertaining to such interest and all dividends, distributions, cash, warrants, rights, options, instruments, securities and other property or proceeds from time to time received, receivable or otherwise distributed in respect of or in exchange for any or all of such trust interests.

"**Proceeds**" shall mean: (i) all "proceeds" as defined in Article 9 of the UCC; and (ii) shall include all dividends, payments or distributions made with respect to any Investment Related Property and whatever is receivable or received when Collateral or proceeds are sold, exchanged, collected or otherwise disposed of, whether such disposition is voluntary or involuntary (in each case, regardless of whether characterized as proceeds under the UCC).

"**Qualified ECP Guarantor**" shall mean, in respect of any Swap Obligation, each Guarantor that has total assets exceeding $10,000,000 at the time the relevant Guarantee or grant of the relevant security interest becomes effective with respect to such Swap Obligation or such other Person as constitutes an "eligible contract participant" under the Commodity Exchange Act or any regulations promulgated thereunder and can cause another Person to qualify as an "eligible contract participant" at such time by entering into a keepwell under Section 1a(18)(A)(v)(II) of the Commodity Exchange Act.

"**Quarterly Update Date**" shall mean the Closing Date and the last day of any Fiscal Quarter until the first Fiscal Quarter in which a Compliance Certificate for such Fiscal Quarter is delivered or required to be delivered under Section 5.01(d) of the Credit Agreement and thereafter, the date on which a Compliance Certificate for such Fiscal Quarter is delivered.

"**Receivables**" shall mean all rights to payment, whether or not earned by performance, for goods or other property sold, leased, licensed, assigned or otherwise disposed of, or services rendered or to be rendered, including, without limitation all such rights constituting or evidenced by any Account, Chattel Paper, Instrument, General Intangible or Investment Related Property, together with all of Grantor's rights, if any, in any goods or other property giving rise to such right to payment and all Collateral Support and Supporting Obligations related thereto and all Receivables Records.

"**Receivables Records**" shall mean (i) all originals or copies of all documents, instruments or other writings or electronic records or other Records evidencing the Receivables; (ii) all books, correspondence, credit or other files, Records, ledger sheets or cards, invoices, and other papers relating to Receivables, including, without limitation, all tapes, cards, computer tapes, computer discs, computer runs, record keeping systems and other papers and documents relating to the Receivables, whether in the possession or under the control of any Grantor or any computer bureau or agent from time to time acting for any Grantor or otherwise; (iii) all evidences of the filing of financing statements and the registration of other instruments in connection therewith, and amendments, supplements or other modifications thereto, notices to other creditors or secured parties, and certificates, acknowledgments, or other writings, including, without limitation, lien search reports, from filing or other registration officers; (iv) all credit information, reports and memoranda relating thereto; and (v) all other written or nonwritten forms of information related in any way to the foregoing or any Receivable.

"**Record**" shall have the meaning specified in Article 9 of the UCC.

"**Sale Proceeds**" shall mean (i) the proceeds from the sale of the Borrower or one or more of the other Grantors, as a going concern or from the sale of the business as a going concern, (ii) the proceeds from another sale or disposition of any assets of the Grantors that includes any Gaming License, Permit or approval or benefits from any Gaming License, Permit or approval or where the assets sold have the benefit of any Gaming License, Permit or approval or (iii) any other economic value (whether in the form of cash or otherwise) received, ascribed or distributed that is associated with the Gaming Licenses, Permits or approvals.

"**Secured Obligations**" shall have the meaning given in Section 3.1.

"**Securities Accounts**" (i) shall mean all "securities accounts" as defined in Article 8 of the UCC and (ii) shall include, without limitation, all of the accounts listed on Schedule 4.4(D) under the heading "Securities Accounts."

"**Securities Entitlements**" shall mean all "securities entitlements" as defined in Article 8 of the UCC.

"**Software**" shall mean all computer programs, object code, source code and supporting documentation, including, without limitation, all "software" as such term is defined in the New York UCC and computer programs that may construed as included in the definition of "goods" in the New York UCC, all licensed rights to the foregoing, and all media on which any such programs, code, documentation or associated data may be stored.

"**Supporting Obligation**" shall mean all "supporting obligations" as defined in Article 9 of the UCC.

"**Swap Obligation**" shall mean, with respect to any Guarantor, any obligation to pay or perform under any agreement, contract or transaction that constitutes a "swap" within the meaning of section 1a(47) of the Commodity Exchange Act.

"**Termination Date**" shall mean the date on which all Secured Obligations have been "paid in full" as such term is defined in the Credit Agreement.

"**Trademark Licenses**" shall mean any and all agreements providing for the granting of any right in or to Trademarks (whether any Grantor is licensee or licensor thereunder) including, without limitation, each agreement referred to in Schedule 4.7(F).

"**Trademarks**" shall mean all United States and foreign trademarks, trade names, corporate names, company names, business names, fictitious business names, , service marks, certification marks, collective marks, logos, other source or business identifiers, designs and general intangibles of a like nature, and all registrations and applications for any of the foregoing including, but not limited to: (i) the registrations, recordings and applications referred to in Schedule 4.7(E); (ii) all extensions and renewals, and any right to obtain any extensions and renewals, of any of the foregoing; and(iii) all of the goodwill of the business connected with the use of and symbolized by the foregoing.

"**Trade Secret Licenses**" shall mean any and all agreements providing for the granting of any right in or to Trade Secrets (whether any Grantor is licensee or licensor thereunder) including, without limitation, each agreement referred to in Schedule 4.7(G).

"**Trade Secrets**" shall mean all trade secrets and all other confidential or proprietary information and know-how whether or not such Trade Secret has been reduced to a writing or other tangible form, including all documents and things embodying, incorporating, or referring in any way to such Trade Secret.

"**UCC**" shall mean the Uniform Commercial Code as the same may, from time to time, be in effect in the State of New York; provided, however, in the event that, by reason of mandatory provisions of law, any or all of the perfection or priority of the security interest in any Collateral is governed by the Uniform Commercial Code as in effect in a jurisdiction other than the State of New York, the term "UCC" shall mean the Uniform Commercial Code as in effect in such other jurisdiction for purposes of the provisions hereof relating to such perfection or priority and for purposes of definitions related to such provisions.

"**Unincorporated Materials**" shall have the meaning given in the Disbursement Agreement.

1.2 Definitions; Interpretation. All capitalized terms used herein (including the preamble and recitals hereto) and not otherwise defined herein shall have the meanings ascribed thereto in the Credit Agreement or, if not defined therein, in the UCC. The rules of construction set forth in Sections 1.02 through 1.08 of the Credit Agreement, including with respect to the meaning of the expressions "payment in full", "paid in full" and any other similar terms or phrases, shall be applicable to this Agreement *mutatis mutandis*. If any conflict or inconsistency exists between this Agreement and the Credit Agreement, the Credit Agreement shall govern. All references herein to provisions of the UCC shall include all successor provisions under any subsequent version or amendment to any Article of the UCC. Except as expressly specified otherwise herein, any reference herein to any Exhibit or Schedule to this Agreement shall be deemed to refer to such Exhibit or Schedule as amended or supplemented from time to time.

SECTION 2. GRANT OF SECURITY.

2.1 Grant of Security Interest by Grantors. Each Grantor hereby assigns as collateral security to the Collateral Agent (for the ratable benefit of the Secured Parties), and hereby grants to the Collateral Agent (for the ratable benefit of the Secured Parties) a security interest in and continuing lien on, all of such Grantor's right, title and interest in, to and under all personal property of such Grantor including, without limitation, all of the following property of such Grantor, in each case whether now owned or existing or hereafter acquired or arising and wherever located (collectively, but exclusive of any Excluded Collateral, the "**Collateral**"), for the prompt and complete payment and performance in full when due and with all rights and remedies under the UCC and other applicable law (whether at stated maturity, by required prepayment, declaration, acceleration, demand or otherwise) of the Secured Obligations:

(a) Accounts;

(b) Chattel Paper;

(c) Documents;

(d) General Intangibles;

(e) Goods;

(f) Instruments;

(g) Insurance;

(h) Intellectual Property;

(i) Software;

(j) Investment Related Property;

(k) Letters of Credit and Letter-of-Credit Rights;

(l) Money;

(m) Receivables and Receivable Records;

(n) Commercial Tort Claims;

(o) Pledged Equity Interests;

(p) Sale Proceeds;

(q) to the extent not otherwise included above, all Collateral Records, Collateral Support and Supporting Obligations relating to any of the foregoing; and

(r) to the extent not otherwise included above, all Proceeds, right to Proceeds, products, accessions, rents and profits of or in respect of any of the foregoing.

2.2 Certain Limited Exclusions. Notwithstanding anything herein to the contrary, but subject to the last sentence of this Section 2.2, in no event shall the security interest granted under Section 2.1 attach to any Excluded Collateral, and Collateral shall not include any Excluded Collateral. Notwithstanding the foregoing, all Proceeds of the Excluded Collateral and the right to receive such Proceeds shall constitute Collateral hereunder to the extent such Proceeds do not independently constitute Excluded Collateral and shall be included within the property and assets over which a security interest is granted under Section 2.1, except to the extent such Proceeds would constitute Excluded Collateral.

SECTION 3. SECURITY FOR OBLIGATIONS; GRANTORS REMAIN LIABLE.

3.1 Security for Obligations. This Agreement secures, and the Collateral is collateral security for, with respect to each Grantor, the prompt and complete payment and performance in full when due, whether at stated maturity, by required prepayment, declaration, acceleration, demand or otherwise (including the payment of amounts that would become due but for the operation of the automatic stay under Section 362(a) of the Bankruptcy Code), of all Obligations of such Grantor (collectively, the "**Secured Obligations**"). Notwithstanding any provision hereof or in any other Loan Document to the contrary, in no event will the Secured Obligations include any Excluded Swap Obligations.

3.2 Continuing Liability Under Collateral. Notwithstanding anything herein to the contrary, (i) each Grantor shall remain liable for obligations under the Collateral and nothing contained herein is intended or shall be a delegation of duties to the Collateral Agent or any Secured Party; (ii) each Grantor shall remain liable under each of the agreements included in the Collateral, including, without limitation, any agreements relating to Pledged Partnership Interests or Pledged LLC Interests, in each case to perform all of the obligations undertaken by it thereunder all in accordance with and pursuant to the terms and provisions thereof and neither the Collateral Agent nor any other Secured Party shall have any obligation or liability under any of such agreements by reason of or arising out of this Agreement or any other document related thereto nor shall the Collateral Agent nor any other Secured Party have any obligation to make any inquiry as to the nature or sufficiency of any payment received by it or have any obligation to take any action to collect or enforce any rights under any agreement included in the Collateral, including, without limitation, any agreements relating to Pledged Partnership Interests or Pledged LLC Interests; and (iii) the exercise by the Collateral Agent of any of its rights hereunder shall

not release any Grantor from any of its duties or obligations under the contracts and agreements included in the Collateral.

SECTION 4. REPRESENTATIONS AND WARRANTIES AND COVENANTS.

4.1 Generally.

(a) Representations and Warranties. Each Grantor hereby represents and warrants, on the Closing Date and on each Credit Date (or with respect to clauses (ii)(y), (vii), and (viii) below, as of the last Quarterly Update Date), that:

(i) it has indicated on Schedule 4.1(A): (A) the type of organization of such Grantor, (B) the jurisdiction of organization of such Grantor, (C) its organizational identification number and (D) the jurisdiction where the chief executive office or its sole place of business is, and for the one-year period preceding the date hereof (or such shorter period as such Grantor has been in existence) has been, located;

(ii) (x) the full legal name of such Grantor is as set forth on Schedule 4.1(A) and (y) it has not done in the last five (5) years (or such shorter period as such Grantor has been in existence), and does not do, business under any other name (including any trade-name or fictitious business name) except for those names set forth on Schedule 4.1(B);

(iii) except as described on Schedule 4.1(C), it has not changed its jurisdiction of organization, chief executive office or sole place of business or its corporate structure in any way (e.g., by merger, consolidation, change in corporate form or otherwise) within the past five (5) years (or such shorter period as such Grantor has been in existence);

(iv) (A) upon the filing of all UCC financing statements naming each Grantor as "debtor" and the Collateral Agent as "secured party" and describing the Collateral in the filing offices set forth opposite such Grantor's name on Schedule 4.1(E) and other filings delivered by each such Grantor; (B) upon delivery of all Instruments, Chattel Paper and certificated Pledged Equity Interests and Pledged Debt; (C) upon sufficient identification of Commercial Tort Claims; (D) upon execution by all applicable parties thereto of a control agreement establishing the Collateral Agent's "control" (within the meaning of Section 8-106, 9-106 or 9-104 of the UCC, as applicable) with respect to any Investment Account (other than any Excluded Account); (E) upon consent of the issuer with respect to Letter-of-Credit Rights; (F) to the extent not subject to Article 9 of the UCC, upon recordation of the security interests granted hereunder in material registered Patents, Trademarks and Copyrights in the United States Patent and Trademark Office and the United States Copyright Office, as applicable; and (G) in the case of Money, the Collateral Agent taking possession of such Money, the security interests granted to the Collateral Agent hereunder constitute valid and perfected (with respect to Intellectual Property, only if and to the extent perfection may be achieved in the United States by the recordations referred to in clauses (A) and (F)) first priority Liens (subject only to Permitted Liens but prior and superior in right to the rights of any other Person (except in the case of Collateral other than Pledged Equity Interests, Persons holding Senior Permitted Liens and then only to the extent thereof)) on all of the Collateral (other than (w) Insurance to the extent it cannot be perfected under the UCC, (x) motor vehicles, (y) any Intellectual Property arising under laws other than that of the United States and (z) On-Site Cash and other Cash not required to be deposited in an Investment Account pursuant to the Loan Documents (except, with respect to clause (z), to the extent constituting proceeds of other Collateral));

(v) subject to Section 11.4, all actions and consents, including all filings, notices, registrations and recordings necessary for the exercise by the Collateral Agent of the voting or other rights provided for in this Agreement or the exercise of remedies in respect of the Collateral have been made or obtained, other than those required under Gaming Laws and federal and state securities laws (with respect only to the exercise of remedies) and consents required in connection with Non-Assignable Contracts;

(vi) no authorization, approval or other action by, and no notice to or filing with, any Governmental Authority or regulatory body is required for either (A) the pledge or grant by any Grantor of the Liens purported to be created in favor of the Collateral Agent hereunder (other than such authorizations, approvals or actions obtained on or prior to the date hereof) or (B) subject to Section 11.4, the exercise by Collateral Agent of any rights or remedies in respect of any Collateral (whether specifically granted or created hereunder or created or provided for by applicable law), except (y) for the filings, actions and approvals contemplated by clause (iv) above and (z) in the case of the exercise of the voting or other rights provided for in this Agreement or the exercise of remedies, those contemplated by clause (v) above, including as may be required under Gaming

Laws and in connection with the disposition of any Investment Related Property by laws generally affecting the offering and sale of Securities;

(vii) except as described on Schedule 4.1(F), none of the Collateral constitutes, or is the Proceeds of, "farm products" (as defined in the UCC);

(viii) except as described on Schedule 4.1(G), it does not own any "as extracted collateral" (as defined in the UCC) or any timber to be cut; and

(ix) each Grantor has been duly organized as an entity of the type as set forth opposite such Grantor's name on Schedule 4.1(A) solely under the laws of the jurisdiction as set forth opposite such Grantor's name on Schedule 4.1(A) and, except as disclosed from time to time to the Collateral Agent and the Administrative Agent in writing, remains duly existing as such, and no such Grantor has filed any certificates of domestication, transfer or continuance in any other jurisdiction.

(b) Covenants and Agreements. Each Grantor hereby covenants and agrees that:

(i) except for the security interest created by this Agreement, it shall not create or suffer to exist any Lien upon or with respect to any of the Collateral, except Permitted Liens;

(ii) it shall not change such Grantor's name, identity, corporate structure (e.g., by merger, consolidation, change in corporate form or otherwise), sole place of business, chief executive office, type of organization or jurisdiction of organization unless it shall have (A) notified the Collateral Agent and the Administrative Agent in writing, by executing and delivering to the Collateral Agent and the Administrative Agent a completed Pledge Supplement at least ten (10) days prior to any such change or establishment, identifying such new proposed name, identity, corporate structure, sole place of business, chief executive office, type of organization, or jurisdiction of organization and providing such other information in connection therewith as the Collateral Agent and the Administrative Agent may reasonably request and (B) taken all actions necessary to maintain the continuous validity, perfection and the same or better priority of the Collateral Agent's security interest in the Collateral intended to be granted and agreed to hereby; and

(iii) it shall not sell, transfer or assign (by operation of law or otherwise) any Collateral except in accordance with the Credit Agreement and the other Loan Documents.

4.2 Equipment and Inventory

(a) Representations and Warranties. Each Grantor represents and warrants, on the Closing Date and on each Credit Date, that, as of the last Quarterly Update Date:

(i) except with respect to Equipment or Inventory having a value of less than $500,000 individually or $2,000,000 in the aggregate (across all Grantors), all Equipment and Inventory included in the Collateral (other than such Equipment and Inventory that is in transit, out for repair or on loan to employees in the ordinary course of business or Unincorporated Materials) is located only at the locations specified in Schedule 4.2; and

(ii) Schedule 4.2 contains the name and address of any warehouseman, bailee or other third party in possession of any Inventory or Equipment included in the Collateral other than any Inventory or Equipment having a value less than $500,000 individually or $1,000,000 in the aggregate (across all Grantors) or otherwise constituting Unincorporated Materials.

(b) Covenants and Agreements. Each Grantor covenants and agrees that:

(i) except with respect to property having a value of less than $2,000,000 in the aggregate (across all Grantors) and any property that is in transit, out for repair or on loan to employees in the ordinary course of business or Unincorporated Materials, it shall keep the Equipment and Inventory included in the Collateral and any Documents evidencing any such Equipment and Inventory in the locations specified in Schedule 4.2 unless it shall have (A) notified the Collateral Agent and the Administrative Agent in writing, by executing and delivering to the Collateral Agent and the Administrative Agent a completed Pledge Supplement on or before the next Quarterly Update Date after any change in locations, identifying such new

locations and providing such other information in connection therewith as the Collateral Agent or the Administrative Agent may reasonably request and (B) taken all actions necessary or advisable to maintain the continuous validity, perfection and the same or better priority of the Collateral Agent's security interest in the Collateral intended to be granted and agreed to hereby, or to enable the Collateral Agent to exercise and enforce its rights and remedies hereunder, with respect to such Equipment and Inventory;

(ii) it shall not deliver any Document evidencing any Equipment and Inventory included in the Collateral to any Person other than the issuer of such Document to claim the Goods evidenced therefor or the Collateral Agent; and

(iii) except for Equipment or Inventory having a value of less than $500,000 individually or $2,000,000 in the aggregate (across all Grantors) or otherwise constituting Unincorporated Materials, if any Equipment or Inventory is in possession or control of any third party (other than such Equipment and Inventory that is in transit, out for repair or on loan to employees in the ordinary course of business), each Grantor shall, at the request of the Collateral Agent, join with the Collateral Agent in notifying the third party of the Collateral Agent's security interest.

4.3 Receivables.

(a) Covenants and Agreements: Each Grantor hereby covenants and agrees that:

(i) other than in the ordinary conduct of its business or the extension of payment terms of markers of gaming patrons (including credit arrangements pursuant to Section 1339 of the New York State Racing, Pari-Mutuel Wagering and Breeding Law and other Gaming Laws), and except as otherwise provided in subsection (ii) below, during the continuance of an Event of Default, such Grantor shall not (A) grant any extension or renewal of the time of payment of any Receivable, (B) compromise or settle any dispute, claim or legal proceeding with respect to any Receivable for less than the total unpaid balance thereof, (C) release, wholly or partially, any Person liable for the payment thereof, or (D) allow any credit or discount thereon;

(ii) at any time following the occurrence and during the continuation of an Event of Default, the Collateral Agent shall have the right at any time to (A) notify, or require any Grantor to notify, any Account Debtor of the Collateral Agent's security interest in the Receivables and any Supporting Obligation, (B) direct the Account Debtors under any Receivables to make payment of all amounts due or to become due to such Grantor thereunder directly to the Collateral Agent, (C) notify, or require any Grantor to notify, each Person maintaining a lockbox or similar arrangement to which Account Debtors under any Receivables have been directed to make payment to remit all amounts representing collections on checks and other payment items from time to time sent to or deposited in such lockbox or other arrangement directly to the Collateral Agent, and (D) enforce, at the expense of such Grantor, collection of any such Receivables and to adjust, settle or compromise the amount or payment thereof, in the same manner and to the same extent as such Grantor might have done. If the Collateral Agent notifies any Grantor that it has elected to collect the Receivables in accordance with the preceding sentence, any payments of Receivables received by such Grantor shall be forthwith (and in any event within two (2) Business Days) deposited by such Grantor in the exact form received, duly indorsed by such Grantor to the Collateral Agent if required, in an Investment Account "controlled" (for purposes of the UCC) by the Collateral Agent (it being understood that each Grantor agrees to promptly comply with any reasonable request of the Collateral Agent to establish or enter into a Control Agreement with respect to such an Investment Account), and until so turned over, all amounts and proceeds (including checks and other instruments) received by such Grantor in respect of the Receivables, any Supporting Obligation or Collateral Support shall be received in trust for the benefit of the Collateral Agent hereunder and shall be segregated from other funds of such Grantor and such Grantor shall not adjust, settle or compromise the amount or payment of any Receivable, or release wholly or partly any Account Debtor or obligor thereof, or allow any credit or discount thereon; and

(iii) it shall use its commercially reasonable efforts to keep in full force and effect any Supporting Obligation or Collateral Support relating to any Receivable in excess of $500,000.

(b) Delivery and Control of Receivables. With respect to any Receivables (other than (i) Receivables generated by casino patrons in the ordinary course of gaming activities and (ii) other Receivables in an amount no greater than $500,000 individually or $2,000,000 in the aggregate (across all Grantors)) that are evidenced by, or constitute, Chattel Paper or Instruments (other than checks received in the ordinary course of business), each Grantor shall cause each originally executed copy thereof to be delivered to the Collateral Agent (or its agent or designee) appropriately indorsed to the Collateral Agent or indorsed in blank: (A) with respect to any such Receivables in existence on the date hereof, on or prior to the date hereof, and (B) with respect to any such Receivables hereafter arising, on or before the immediately succeeding Quarterly Update Date. With respect to any Receivables (other than (i) Receivables generated by casino patrons in the ordinary course of gaming activities and (ii) other Receivables in an amount no greater than $500,000 individually or $2,000,000 in the aggregate (across all Grantors)) which would constitute "electronic chattel paper" under Article 9 of the UCC, each Grantor shall take all steps necessary to give the Collateral Agent control over such Receivables (within the meaning of Section 9-105 of the UCC): (A) with respect to any such Receivables in existence on the date hereof, on or prior to the date hereof, and (B) with respect to any such Receivables hereafter arising, on or before the immediately succeeding Quarterly Update Date.

4.4 Investment Related Property.

4.4.1 Investment Related Property Generally.

(a) Covenants and Agreements. Each Grantor hereby covenants and agrees that:

(i) in the event it acquires rights in any Investment Related Property (other than Cash Equivalents credited to a Securities Account) that is Collateral after the date hereof with a value in excess of $500,000 individually or $2,000,000 in the aggregate, it shall deliver to the Collateral Agent and the Administrative Agent, on or before the Quarterly Update Date immediately following any such acquisition, a completed Pledge Supplement reflecting such new Investment Related Property. Notwithstanding the foregoing, it is understood and agreed that the security interest of the Collateral Agent shall attach to all Investment Related Property that is Collateral immediately upon any Grantor's acquisition of rights therein and shall not be affected by the failure of any Grantor to deliver a supplement to Schedule 4.4 as required hereby;

(ii) except as provided in the immediately succeeding sentence, in the event such Grantor receives any dividends, interest or distributions on any Investment Related Property that is Collateral, or any securities or other property upon the merger, consolidation, liquidation or dissolution of any issuer of any such Investment Related Property, then (A) such dividends, interest or distributions and securities or other property shall be included in the definition of Collateral without further action and (B) such Grantor shall promptly take all actions, if any, necessary or, in the reasonable opinion of the Collateral Agent upon notice to such Grantor, necessary to ensure the validity, perfection, at least the same priority and, if applicable, control of the Collateral Agent over such Investment Related Property (including, without limitation, delivery thereof to the Collateral Agent) intended to be granted and agreed to hereby and pending any such action such Grantor shall be deemed to hold such dividends, interest, distributions, securities or other property in trust for the benefit of the Collateral Agent and shall segregate such dividends, distributions, securities or other property from all other property of such Grantor. Notwithstanding the foregoing, so long as no Event of Default shall have occurred and be continuing, the Collateral Agent authorizes each Grantor to retain all dividends and distributions paid and all payments of principal and interest; and

(iii) each Grantor consents to the grant by each other Grantor of a security interest in all Investment Related Property that is Collateral to the Collateral Agent.

(b) Delivery and Control.

With respect to any Investment Related Property that is Collateral that is (a) represented by a certificate or (b) that is an "instrument" (other than (i) any Investment Related Property credited to a Securities Account, (ii) instruments generated by casino patrons in the ordinary course of gaming activities, (iii) Investment Related Property constituting Pledged Debt with an aggregate value of less than $500,000 and (iv) checks received in the ordinary course of business), it shall cause such certificate

or instrument to be delivered to the Collateral Agent, indorsed in blank by an "effective indorsement" (as defined in Section 8-107 of the UCC), regardless of whether such certificate constitutes a "certificated security" for purposes of the UCC. With respect to any Investment Related Property that is Collateral that is an "uncertificated security" for purposes of the UCC (other than any "uncertificated securities" credited to a Securities Account), it shall use reasonable commercial efforts to cause the issuer of such uncertificated security to either (A) register the Collateral Agent as the registered owner thereof on the books and records of the issuer or (B) execute an agreement substantially in the form of Exhibit B, pursuant to which such issuer agrees to comply with the Collateral Agent's instructions with respect to such uncertificated security without further consent by such Grantor. Until the Secured Obligations have been paid in full and subject to the Intercreditor Agreement, any obligation of Pledgor in this Agreement that requires (or any representation or warranty hereunder to the extent that it would have the effect of requiring) delivery of any certificate or instruments representing any Investment Related Property that is represented by a certificate or that is an "instrument" (including any endorsements related thereto), any other Instrument (including any endorsements related thereto) or any Chattel Paper to the Collateral Agent shall be deemed complied with and satisfied (or, in the case of any representation or warranty hereunder, shall be deemed to be true) if such delivery of such Investment Related Property, other Instrument or Chattel Paper is made to, or such possession is with, the Term Loan Collateral Agent.

(c) Voting and Distributions.

(i) Subject to clause (ii) below, each Grantor shall be entitled to exercise or refrain from exercising any and all voting and other consensual rights pertaining to the Investment Related Property or any part thereof.

(ii) Upon the occurrence and during the continuation of an Event of Default and following written notice by the Collateral Agent to such Grantor (although no such notice shall be required if an Event of Default under Section 7.01(h) or (i) of the Credit Agreement has occurred and is continuing):

(A) all rights of such Grantor to exercise or refrain from exercising the voting and other consensual rights which it would otherwise be entitled to exercise pursuant hereto shall cease and all such rights shall thereupon become vested in the Collateral Agent who shall thereupon have the sole right to exercise or refrain from exercising such voting and other consensual rights; and

(B) in order to permit the Collateral Agent to exercise the voting and other consensual rights which it may be entitled to exercise pursuant hereto and to receive all dividends and other distributions which it may be entitled to receive hereunder: (y) such Grantor shall promptly execute and deliver (or cause to be executed and delivered) to the Collateral Agent all proxies, dividend payment orders and other instruments as the Collateral Agent may from time to time reasonably request and (z) such Grantor acknowledges that the Collateral Agent may utilize the power of attorney set forth in Section 6.1.

(d) Certain Permitted Actions to Protect Investment Related Property.

In addition to the foregoing, if any issuer of any Investment Related Property constituting Collateral (which Investment Related Property has a value in excess of $500,000 individually or $1,000,000 in the aggregate) is located in a jurisdiction outside of the United States, each Grantor shall promptly notify the Collateral Agent and the Administrative Agent thereof and take, upon the request of the Collateral Agent or the Administrative Agent, such additional actions, including, without limitation, using commercially reasonable efforts to cause the issuer to register the pledge on its books and records or make such filings or recordings, in each case as may be necessary or, in the reasonable opinion of the Collateral Agent, advisable, under the laws of such issuer's jurisdiction to insure the validity, perfection and priority of the security interest of the Collateral Agent. Upon the occurrence and during the continuation of an Event of Default, the Collateral Agent shall have the right, without notice to any Grantor, to transfer all or any portion of such Investment Related Property to its name or the name of its nominee or agent. In addition, upon the occurrence and during the continuation of an Event of Default, the Collateral Agent shall have the right at any time, without notice to any Grantor, to exchange any certificates or instruments representing any such Investment Related Property for certificates or instruments of smaller or larger denominations.

4.4.2 Pledged Equity Interests

(a) Representations and Warranties. Each Grantor hereby represents and warrants that:

(i) as of the Closing Date and on each Credit Date, as of the most recent Quarterly Update Date, Schedule 4.4(A) sets forth under the headings "Pledged Stock," "Pledged LLC Interests," "Pledged Partnership Interests" and "Pledged Trust

Interests," respectively, all of the Pledged Stock, Pledged LLC Interests, Pledged Partnership Interests and Pledged Trust Interests owned by any Grantor and such Pledged Equity Interests constitute the percentage of issued and outstanding shares of stock, percentage of membership interests, percentage of partnership interests or percentage of beneficial interest of the respective issuers thereof indicated on such Schedule 4.4(A);

(ii) it is the record and beneficial owner of the Pledged Equity Interests free of all Liens other than Liens created by the Loan Documents and other Permitted Liens described in clauses (b), (s), (x) and (bb) of Section 6.02 of the Credit Agreement; and

(iii) without limiting the generality of Section 4.1(a)(v), but subject to Section 11.4 and the exceptions contained in Section 4.1(a)(v), no consent of any Person (other than has already been obtained) including any other general or limited partner, any other member of a limited liability company, any other shareholder or any other trust beneficiary is necessary in connection with the creation, perfection or first priority status of the security interest of the Collateral Agent in any Pledged Equity Interests included in the Collateral or the exercise by the Collateral Agent of the voting or other rights provided for in this Agreement or the exercise of remedies in respect thereof.

(b) Covenants and Agreements. Each Grantor hereby covenants and agrees that:

(i) without the prior written consent of the Collateral Agent or the Administrative Agent, it shall not vote to enable or take any other action to, except as permitted by the Credit Agreement and the other Loan Documents, amend or terminate any partnership agreement, limited liability company agreement, certificate of incorporation, by-laws or other organizational documents in any way that adversely affects the validity, perfection or priority of the Collateral Agent's security interest;

(ii) in the event that any Pledged Partnership Interests or Pledged LLC Interests included in the Collateral which are not securities (for purposes of the UCC) on the date hereof become treated as securities for purposes of the UCC, the applicable Grantor shall promptly (A) notify the Collateral Agent and the Administrative Agent in writing of such treatment and (B) take all steps necessary or, in the reasonable opinion of the Collateral Agent upon written notice to such Grantor, advisable to establish the Collateral Agent's "control" (for purposes of the UCC) of such Pledged Partnership Interests or Pledged LLC Interests, as applicable; and

(iii) each Grantor consents to the grant by each other Grantor of a security interest in all Investment Related Property included in the Collateral to the Collateral Agent and, without limiting the foregoing, consents to the transfer of any Pledged Partnership Interest and any Pledged LLC Interest to the Collateral Agent or its nominee in accordance with this Agreement following the occurrence and during the continuation of an Event of Default and to the substitution of the Collateral Agent or its nominee as a partner in any partnership or as a member in any limited liability company with all the rights and powers (including economic, voting and control rights) related thereto.

4.4.3 Pledged Debt

Each Grantor hereby represents and warrants that (a) as of the Closing Date and each Credit Date, as of the immediately preceding Quarterly Update Date, Schedule 4.4(C) sets forth under the heading "Pledged Debt" all of the Pledged Debt with a value in excess of $500,000 individually or $2,000,000 in the aggregate owned by any Grantor (excluding any Indebtedness owed by gaming patrons) and (b) all of such Pledged Debt issued by an Affiliate of such Grantor is the legal, valid and binding obligation of the issuers thereof and, except as set forth on Schedule 4.4(C), is not in default in any material respect.

4.4.4 Investment Accounts

(a) Representations and Warranties. Each Grantor hereby represents and warrants that:

(i) as of the Closing Date and each Credit Date, as of the immediately preceding Quarterly Update Date, Schedules 4.4(D) and (E) sets forth under the headings "Securities Accounts" and "Commodities Accounts," respectively, all of the Securities Accounts and Commodities Accounts in which each Grantor has an interest;

(ii) each Grantor is the sole entitlement holder of each of its Securities Accounts and Commodities Accounts, and such Grantor has not consented to, and is not otherwise aware of, any Person (other than the Collateral Agent pursuant hereto, the

Disbursement Agent (as defined in the Term Loan Agreement) and the Term Loan Collateral Agent pursuant to the Term Facility Documents) having "control" (within the meanings of Sections 8-106 and 9-106 of the UCC) over, or any other interest in, any such Securities Account or Commodities Account or securities or other property credited thereto;

(iii) as of the Closing Date and each Credit Date, as of the immediately preceding Quarterly Update Date, Schedule 4.4(F) sets forth under the headings "Deposit Accounts" all of the Deposit Accounts in which each Grantor has an interest;

(iv) each Grantor is the sole account holder of each of its Deposit Accounts (other than Excluded Accounts) and such Grantor has not consented to, and is not otherwise aware of, any Person (other than the Collateral Agent pursuant hereto, the Disbursement Agent (as defined in the Term Loan Agreement), any Person as a result of a Permitted Lien and the applicable depository institution) having "control" (within the meaning of Section 9-104 of the UCC) over, or any other interest in, any such Deposit Account or any money or other property deposited therein; and

(v) each Grantor has taken all actions (within the time requirements specified by the Credit Agreement and the other Loan Documents to the extent expressly provided therein) necessary, including those specified in Section 4.4.4(b), to: (A) establish the Collateral Agent's "control" (within the meanings of Sections 8-106 and 9-106 of the UCC) over any portion of the Investment Related Property constituting Certificated Securities, Uncertificated Securities, Securities Accounts, Securities Entitlements or Commodities Accounts (each as defined in the UCC); (B) establish the Collateral Agent's "control" (within the meaning of Section 9-104 of the UCC) over all Deposit Accounts (other than Excluded Accounts); and (C) deliver all Instruments to the Collateral Agent, in each case except to the extent constituting Excluded Collateral.

(b) Delivery and Control.

With respect to any Investment Related Property consisting of Securities Accounts or Securities Entitlements (other than Excluded Accounts), each Grantor shall cause the securities intermediary maintaining such Securities Account or Securities Entitlement to enter into an agreement acceptable to the securities intermediary, the Administrative Agent and the Collateral Agent, which is effective to establish "control" under the UCC pursuant to which it shall agree to comply with the Collateral Agent's "entitlement orders" without further consent by such Grantor. With respect to any Investment Related Property that is a Deposit Account (other than Excluded Accounts), each Grantor shall cause the depositary institution maintaining such account to enter into an agreement reasonably acceptable to the depositary institution, the Administrative Agent and the Collateral Agent, which is effective to establish "control" under the UCC, pursuant to which the Collateral Agent shall have "control" (within the meaning of Section 9-104 of the UCC) over such Deposit Account. Each Grantor shall have entered into such control agreement or agreements with respect to: (A) any Securities Accounts, Securities Entitlements or Deposit Accounts (other than Excluded Accounts) that exist on the Closing Date, as of or prior to the Closing Date and (B) any Securities Accounts, Securities Entitlements or Deposit Accounts (other than Excluded Accounts) that are created or acquired after the Closing Date, as of or prior to the deposit or transfer of any such Securities Entitlements or funds, whether constituting moneys or investments, into such Securities Accounts or Deposit Accounts. In addition to the above exclusions for Excluded Accounts, the provisions of this Section 4.4.4(b) shall not apply with respect to any Investment Related Property to the extent constituting Excluded Collateral. In the case of any Investment Account, so long as no Event of Default has occurred and is continuing, the Collateral Agent agrees, subject to the terms of the Disbursement Agreement, the Credit Agreement and the other Loan Documents, that it shall not give any orders or instructions to any applicable depositary institution or securities intermediary concerning or directing the disposition, transfer, withdrawal, disbursement or investment of any funds in or credited to such Investment Account.

4.5 [Reserved].

4.6 Letter-of-Credit Rights.

(a) Representations and Warranties. Each Grantor hereby represents and warrants that:

(i) as of the Closing Date and each Credit Date, as of the immediately preceding Quarterly Update Date, all letters of credit in excess of $500,000 to which such Grantor has Letter-of-Credit Rights, or pursuant to which such Grantor is the beneficiary, are listed on Schedule 4.6; and

(ii) it has used commercially reasonable efforts to obtain the consent of each issuer of any letter of credit listed on Schedule 4.6 in excess of $500,000 to the assignment of the proceeds of such letter of credit to the Collateral Agent.

(b) Covenants and Agreements. Each Grantor hereby covenants and agrees that with respect to any letter of credit to which such Grantor has Letter-of-Credit Rights or pursuant to which such Grantor is the beneficiary, in excess of $500,000 hereafter arising it shall use commercially reasonable efforts to obtain the consent of the issuer thereof to the assignment of the proceeds of the letter of credit to the Collateral Agent and shall deliver to the Collateral Agent and the Administrative Agent a completed Pledge Supplement.

4.7 Intellectual Property.

(a) Representations and Warranties. Each Grantor hereby represents and warrants that, as of the Closing Date and each Credit Date, as of the immediately preceding Quarterly Update Date:

(i) Schedule 4.7 sets forth a true and complete list of (A) all United States registrations of and applications for Patents, Trademarks, Copyrights and Domain Names owned by each Grantor and (B) all Intellectual Property Licenses material to the business of such Grantor (other than such licenses related to gaming machines and other equipment), excluding licenses to commercially available off-the-shelf software;

(ii) it is the owner of the entire right, title, and interest in and to all Intellectual Property listed under its name on Schedule 4.7 and owns or has the valid right to use all other Intellectual Property used in or necessary to conduct its business, free and clear of all Liens, except for Permitted Liens and except to the extent not reasonably likely to have a Material Adverse Effect;

(iii) except to the extent not reasonably likely to have a Material Adverse Effect, all Intellectual Property set forth on Schedule 4.7 is subsisting and has not been adjudged invalid or unenforceable, in whole or in part, and such Grantor has performed all acts and has paid all renewal, maintenance, and other fees and taxes required to maintain the Intellectual Property set forth on Schedule 4.7 in full force and effect;

(iv) except to the extent not reasonably likely to have a Material Adverse Effect, (A) all Intellectual Property set forth on Schedule 4.7 is valid and enforceable, (B) no holding, decision, or judgment has been rendered in any action or proceeding before any court or administrative authority challenging the validity of, such Grantor's right to register, or such Grantor's rights to own or use any Intellectual Property set forth on Schedule 4.7 and (C) no such action or proceeding is pending or, to such Grantor's knowledge, threatened;

(v) except to the extent not reasonably likely to have a Material Adverse Effect, such Grantor has been using appropriate statutory notice of registration in connection with its use of registered Trademarks, proper marking practices in connection with the use of Patents, and appropriate notice of copyright in connection with the publication of Copyrights, in each case, with respect to the Trademarks, Patents and Copyrights owned by such Grantor;

(vi) except to the extent not reasonably likely to have a Material Adverse Effect, (A) the conduct of such Grantor's business does not infringe upon or otherwise violate any Trademark, Patent, Copyright, Trade Secret or other Intellectual Property right owned by a third party and (B) no claim has been made that the use by such Grantor of any Intellectual Property owned or used by such Grantor violates the Intellectual Property rights of any third party;

(vii) except to the extent not reasonably likely to have a Material Adverse Effect, to such Grantor's knowledge, no third party is infringing upon or otherwise violating any rights in any Intellectual Property owned or used by such Grantor; and

(viii) except to the extent not reasonably likely to have a Material Adverse Effect, no settlement or consents, covenants not to sue, nonassertion assurances, or releases have been entered into by such Grantor or to which such Grantor is bound that adversely affect such Grantor's rights to own or use any Intellectual Property.

(b) Covenants and Agreements. Each Grantor hereby covenants and agrees as follows:

(i) except to the extent not material to its business as determined in good faith in such Grantor's reasonable business judgment, it shall not do any act or omit to do any act whereby any of the material Intellectual Property owned by such Grantor may lapse, or become abandoned, dedicated to the public, or unenforceable;

(ii) it shall take, at its own expense, commercially reasonable steps in the United States Patent and Trademark Office, the United States Copyright Office, or any foreign counterpart of the foregoing, to pursue any application and maintain any registration of each Trademark, Patent, and Copyright owned by such Grantor and material to its business as determined in good faith in such Grantor's reasonable business judgment which is now or shall become included in the Intellectual Property included in the Collateral including, but not limited to, those items on Schedule 4.7(A), (C) and (E);

(iii) to the extent determined in good faith in such Grantor's reasonable business judgment that any Intellectual Property owned by or exclusively licensed to such Grantor that is material to its business is infringed, misappropriated, or diluted by a third party, such Grantor shall take commercially reasonable actions to protect its rights in such Intellectual Property including, but not limited to, the initiation of a suit for injunctive relief and to recover damages, as applicable;

(iv) it shall report to the Collateral Agent and the Administrative Agent (A) the filing of any application to register any Intellectual Property material to the conduct of its business with the United States Patent and Trademark Office or the United States Copyright Office (whether such application is filed by such Grantor or through any agent, employee, licensee, or designee thereof), (B) the acquisition of any such application or registration by purchase or assignment, and (C) the registration of any such Intellectual Property by any such office, in each case by executing and delivering to the Collateral Agent and the Administrative Agent a completed Pledge Supplement in each case of the preceding clauses (A), (B) and (C), no later than the Quarterly Update Date for the Fiscal Quarter during which such filing or registration was made; and

(v) it shall within a reasonable period of time upon the reasonable request of the Collateral Agent, execute and deliver to the Collateral Agent and the Administrative Agent at such Grantor's expense any document required to acknowledge, confirm, register, record, or perfect the Collateral Agent's interest in any part of the material Intellectual Property registered in the United States, whether now owned or hereafter acquired.

4.8 Commercial Tort Claims.

(a) Representations and Warranties. Each Grantor hereby represents and warrants, on the Closing Date, that Schedule 4.8 sets forth all Commercial Tort Claims of each Grantor in excess of $500,000 individually and $2,000,000 in the aggregate (across all Grantors); and

(b) Covenants and Agreements. Each Grantor hereby covenants and agrees that with respect to any Commercial Tort Claim of such Grantor hereafter arising it shall deliver to the Collateral Agent and the Administrative Agent a completed Pledge Supplement identifying such new Commercial Tort Claims in excess of $500,000 individually and $2,000,000 in the aggregate (across all Grantors) no later than the Quarterly Update Date for the Fiscal Quarter during which such Grantor became aware of such Commercial Tort Claim.

4.9 Perfection of *De Minimis* Collateral. Notwithstanding anything to the contrary in this Section 4, the Grantors shall not be required to perfect any security interest granted to the Collateral Agent (including with respect to vehicles) as to which the Collateral Agent and the Administrative Agent have determined in writing in their sole discretion that the collateral value thereof is insufficient to justify the difficulty, time and/or expense of obtaining a perfected security interest therein.

SECTION 5. ACCESS; RIGHT OF INSPECTION AND FURTHER ASSURANCES; ADDITIONAL GRANTORS.

5.1 Further Assurances.

(a) Each Grantor agrees that from time to time, at the expense of such Grantor, it shall promptly execute and deliver all further instruments and documents, and take all further action, that may be necessary or, in the reasonable opinion of the Collateral Agent upon written notice to such Grantor, desirable, or that the Collateral Agent or the Administrative Agent may reasonably request in writing, in order to create and/or maintain the validity, perfection or priority of and protect any security interest granted or intended to be granted hereby or to enable the Collateral Agent during the continuance of an Event of Default to exercise and enforce its rights and remedies hereunder with respect to any Collateral. Without limiting the generality of the foregoing, each Grantor shall:

(i) file such financing or continuation statements, or amendments thereto, and execute and deliver such other agreements, instruments, endorsements, powers of attorney or notices, as may be necessary or, in the reasonable opinion of the

Collateral Agent upon notice to such Grantor, desirable, or as the Collateral Agent or the Administrative Agent may reasonably request, in order to perfect and preserve the security interests granted or purported to be granted hereby;

(ii) take all actions commercially reasonable to ensure the recordation of appropriate evidence of the liens and security interest granted hereunder in the Intellectual Property included in the Collateral with the United States Patent and Trademark Office or the United States Copyright Office; and for the avoidance of doubt, nothing in this Agreement shall require any Grantor to make any filings or take any other actions to record or perfect the Collateral Agent's interest in any part of the Intellectual Property included in the Collateral outside of the United States;

(iii) at any reasonable time, upon written request by the Collateral Agent or the Administrative Agent, allow inspection of the Collateral by the Collateral Agent or the Administrative Agent, or persons designated by the Collateral Agent or the Administrative Agent in each case to the extent permitted by (and subject to the limitations set forth in) the Credit Agreement; and

(iv) at the Collateral Agent's or the Administrative Agent's reasonable request, appear in and use commercially reasonable efforts to defend any action or proceeding that may adversely affect such Grantor's title to or the Collateral Agent's security interest in all or any part of the Collateral.

(b) Each Grantor hereby authorizes the Collateral Agent and the Administrative Agent to file a Record or Records, including, without limitation, financing or continuation statements, and amendments thereto, in any jurisdictions and with any filing offices as the Collateral Agent or the Administrative Agent may determine, in its sole discretion, are necessary or advisable to perfect the security interest granted to the Collateral Agent herein. Such financing statements may describe the Collateral in the same manner as described herein or may contain an indication or description of collateral that describes such property in any other manner as the Collateral Agent or the Administrative Agent may determine, in its sole discretion, is necessary, advisable or prudent to ensure the perfection of the security interest in the Collateral granted to the Collateral Agent herein, including, without limitation, describing such property as "all assets" or "all personal property, whether now owned or hereafter acquired." Each Grantor shall furnish to the Collateral Agent and the Administrative Agent from time to time (but not more than twice each year) statements and schedules further identifying and describing the Collateral (including disclosing any new applications to register with the United States Patent and Trademark Office or the United States Copyright Office any Intellectual Property included in the Collateral) and such other reports in connection with the Collateral as the Collateral Agent or the Administrative Agent may reasonably request, all in reasonable detail. Notwithstanding the foregoing or any other term or provision herein, the Collateral Agent shall be under no obligation whatsoever to prepare or file any financing or confirmation statements or record any documents or instruments in any public office at any time or times or otherwise to perfect or maintain the perfection of any security interest in the Collateral.

5.2 Additional Grantors. From time to time subsequent to the date hereof, additional Persons may become parties hereto as additional Grantors (each, an "**Additional Grantor**"), by executing a Joinder Agreement, together with a Pledge Supplement and any other attachments, all in form and substance reasonably satisfactory to the Collateral Agent and the Administrative Agent. Upon delivery of any such Joinder Agreement to the Collateral Agent and the Administrative Agent, notice of which is hereby waived by the other Grantors, each Additional Grantor shall be a Grantor and shall be as fully a party hereto as if such Additional Grantor were an original signatory hereto. Each Grantor expressly agrees that its obligations arising hereunder shall not be affected or diminished by the addition or release of any other Grantor hereunder, nor by any election of Collateral Agent or the Administrative Agent not to cause any other Subsidiary of the Borrower to become an Additional Grantor hereunder. This Agreement shall be fully effective as to each Grantor that is or becomes a party hereto regardless of whether any other Person becomes or fails to become or ceases to be a Grantor hereunder.

SECTION 6. COLLATERAL AGENT APPOINTED ATTORNEY-IN-FACT.

6.1 Power of Attorney. Subject to Section 11.4, until the Termination Date, each Grantor hereby irrevocably appoints the Collateral Agent (such appointment being coupled with an interest) as such Grantor's attorney-in-fact, with full authority in the place and stead of such Grantor and in the name of such Grantor, the Collateral Agent or otherwise, from time to time in the Collateral Agent's discretion to take any action and to execute any instrument that the Collateral Agent may deem reasonably necessary or, upon notice to such Grantor, advisable to accomplish the purposes of this Agreement, including, without limitation, the following:

(a) upon the occurrence and during the continuance of any Event of Default, to obtain and/or adjust insurance required to be maintained by such Grantor or paid to the Collateral Agent pursuant to the Loan Documents;

(b) upon the occurrence and during the continuance of any Event of Default, to ask for, demand, collect, sue for, recover, compound, receive and give acquittance and receipts for moneys due or to become due under or in respect of any of the Collateral;

(c) upon the occurrence and during the continuance of any Event of Default, to receive, endorse and collect any drafts or other Instruments, Documents and Chattel Paper in connection with clause (b) above;

(d) upon the occurrence and during the continuance of any Event of Default, to file any claims or take any action or institute any proceedings that the Collateral Agent may deem necessary or desirable for the collection of any of the Collateral or otherwise to enforce the rights of the Collateral Agent with respect to any of the Collateral;

(e) to prepare and file any UCC financing statements against such Grantor as debtor;

(f) upon the occurrence and during the continuance of any Event of Default, to prepare, sign, and file any document which may be required by the United States Patent and Trademark Office, the United States Copyright Office or similar registrar in order to effect an absolute assignment of all right, title and interest in all registered Intellectual Property and any application for all such registrations, and record the same;

(g) to prepare for recordation in the United States Patent and Trademark Office or the United States Copyright Office (or any other intellectual property registry where recordation is, or may become, legally required under applicable law to confirm, register, record, or perfect the Collateral Agent's interest in any part of the Intellectual Property included in the Collateral) appropriate evidence of the lien and security interest granted herein in the Intellectual Property in the name of such Grantor as debtor;

(h) upon the occurrence and during the continuance of any Event of Default, to take or cause to be taken all actions necessary to perform or comply or cause performance or compliance with the terms of this Agreement, including, without limitation, access to pay or discharge taxes or Liens (other than Permitted Liens) levied or placed upon or threatened against the Collateral, the legality or validity thereof and the amounts necessary to discharge the same to be determined by the Collateral Agent in its sole discretion, any such payments made by the Collateral Agent to become obligations of such Grantor to the Collateral Agent, due and payable immediately without demand;

(i) upon the occurrence and during the continuance of any Event of Default, generally to sell, transfer, pledge, make any agreement with respect to or otherwise deal with any of the Collateral as fully and completely as though the Collateral Agent were the absolute owner thereof for all purposes; and

(j) to do, at the Collateral Agent's option and such Grantor's expense, at any time or from time to time, all acts and things that the Collateral Agent deems reasonably necessary to protect, preserve or, upon the occurrence and during the continuation of any Event of Default, realize upon the Collateral and the Collateral Agent's security interest therein in order to effect the intent of this Agreement.

6.2 No Duty on the Part of Collateral Agent or Secured Parties. The powers conferred on the Collateral Agent hereunder are solely to protect the interests of the Secured Parties in the Collateral and shall not impose any duty upon the Collateral Agent or any Secured Party to exercise any such powers. The Collateral Agent and the Secured Parties shall be accountable only for amounts that they actually receive as a result of the exercise of such powers, and neither they nor any of their officers, directors, employees or agents shall be responsible to any Grantor for any act or failure to act hereunder, except for their own gross negligence or willful misconduct (as determined by a court of competent jurisdiction by final and nonappealable judgment).

SECTION 7. REMEDIES.

7.1 Generally.

(a) If any Event of Default shall have occurred and be continuing, subject to Section 11.4, the Collateral Agent may exercise in respect of the Collateral, in addition to all other rights and remedies provided for herein or otherwise available to it at law or in equity, all the rights and remedies of the Collateral Agent on default under the UCC (whether or not the UCC applies to the affected

Collateral) to collect, enforce or satisfy any Secured Obligations then owing, whether by acceleration or otherwise, and also may pursue any of the following separately, successively or simultaneously:

(i) require any Grantor to, and each such Grantor to the same extent hereby agrees that it shall, at its expense and promptly upon request of the Collateral Agent forthwith, assemble all or part of the Collateral as directed by the Collateral Agent and make it available to the Collateral Agent at a place to be designated by the Collateral Agent that is reasonably convenient to both parties;

(ii) enter onto the property where any Collateral is located and take possession thereof with or without judicial process;

(iii) prior to the disposition of the Collateral, store, process, repair or recondition the Collateral or otherwise prepare the Collateral for disposition in any manner to the extent the Collateral Agent deems appropriate; and

(iv) without notice except as specified below or under the UCC, sell, assign, lease, license (on an exclusive or nonexclusive basis) or otherwise dispose of the Collateral or any part thereof in one or more parcels at public or private sale, at any of the Collateral Agent's offices or elsewhere, for cash, on credit or for future delivery, at such time or times and at such price or prices and upon such other terms as the Collateral Agent may deem commercially reasonable.

(b) The Collateral Agent or any Secured Party may be the purchaser of any or all of the Collateral at any public or private sale (to the extent the portion of the Collateral being privately sold is of a kind that is customarily sold on a recognized market or the subject of widely distributed standard price quotations) in accordance with the UCC and the Collateral Agent, as collateral agent under the Credit Agreement for the benefit of the Secured Parties shall be entitled, for the purpose of bidding and making settlement or payment of the purchase price for all or any portion of the Collateral sold at any such sale made in accordance with the UCC, to use and apply any of the Secured Obligations as a credit on account of the purchase price for any Collateral payable by the Collateral Agent at such sale. Each purchaser at any such sale shall hold the property sold absolutely free from any claim or right on the part of any Grantor, and each Grantor hereby waives (to the extent permitted by applicable law) all rights of redemption, stay and/or appraisal which it now has or may at any time in the future have under any rule of law or statute now existing or hereafter enacted. Each Grantor agrees that, to the extent notice of sale shall be required by law or this Agreement, at least ten (10) days' notice to such Grantor of the time and place of any public sale or the time after which any private sale is to be made shall constitute reasonable notification. The Collateral Agent shall not be obligated to make any sale of Collateral regardless of notice of sale having been given. The Collateral Agent may adjourn any public or private sale from time to time by announcement at the time and place fixed therefor, and such sale may, without further notice, be made at the time and place to which it was so adjourned. Each Grantor agrees that it would not be commercially unreasonable for the Collateral Agent to dispose of the Collateral or any portion thereof by using Internet sites that provide for the auction of assets of the types included in the Collateral or that have the reasonable capability of doing so, or that match buyers and sellers of assets. Each Grantor hereby waives any claims against the Collateral Agent arising by reason of the fact that the price at which any Collateral may have been sold at such a private sale was less than the price which might have been obtained at a public sale, even if the Collateral Agent accepts the first offer received and does not offer such Collateral to more than one offeree so long as such process is commercially reasonable. If the proceeds of any sale or other disposition of the Collateral are insufficient to pay all the Secured Obligations, each Grantor shall be liable for the deficiency and the fees of any attorneys employed by the Collateral Agent to collect such deficiency. Each Grantor further agrees that a breach of any of the covenants contained in this Section 7.1(b) will cause irreparable injury to the Collateral Agent, that the Collateral Agent has no adequate remedy at law in respect of such breach and, as a consequence, that each and every covenant contained in this Section shall be specifically enforceable against such Grantor, and such Grantor hereby waives and agrees not to assert any defenses (other than defense of payment or performance) against an action for specific performance of such covenants except for a defense that no default has occurred giving rise to the Secured Obligations becoming due and payable prior to their stated maturities. Nothing in this Section 7.1(b) shall in any way alter the rights of the Collateral Agent hereunder.

(c) The Collateral Agent may sell the Collateral without giving any warranties as to the Collateral. The Collateral Agent may specifically disclaim or modify any warranties of title or the like. This procedure will not be considered to adversely affect the commercial reasonableness of any sale of the Collateral.

(d) The Collateral Agent shall have no obligation to marshal any of the Collateral.

(e) Nothing in this Agreement waives any duty of the Collateral Agent or any right of the Grantors which cannot be waived under Section 9-602 of the UCC or other mandatory provisions of applicable law.

(f) In furtherance of the foregoing, in the event of a foreclosure, deed in lieu of foreclosure or other similar transfer of the Project to the Collateral Agent or its designee, the Loan Parties shall, to the extent required by the Collateral Agent, use commercially reasonable efforts to assist the Collateral Agent or its designee in obtaining all Gaming Licenses and other governmental approvals necessary to conduct gaming operations at the Project. Following a foreclosure, deed in lieu of foreclosure or other similar transfer of the Project to the Collateral Agent or its designee, subject to receipt of requisite approvals from any applicable Gaming Authority, the Loan Parties shall use commercially reasonable efforts to assist with the transition of the gaming at the Project to any new gaming operator (including, without limitation, the Collateral Agent or its designee).

7.2 Application of Proceeds. All proceeds received by the Collateral Agent in respect of any sale, any collection from, or other realization upon all or any part of the Collateral and (to the extent that the application thereof is not otherwise provided for in any other Loan Document) all other cash or proceeds received by the Collateral Agent for the benefit of the Secured Parties shall be applied in full or in part by the Collateral Agent or the Administrative Agent against the Secured Obligations in accordance with Section 7.02 of the Credit Agreement. For the avoidance of doubt, notwithstanding any other provision of any Loan Document to the contrary, no such payment received from any Grantor (other than the Borrower) that is not a Qualified ECP Guarantor shall be applied by the Administrative Agent or any other Secured Party to the payment of any Excluded Swap Obligations.

7.3 Sales on Credit. If the Collateral Agent sells any of the Collateral upon credit, the applicable Grantor will be credited only with payments actually made by purchaser and received by the Collateral Agent and applied to indebtedness of the purchaser. In the event the purchaser fails to pay for the Collateral, the Collateral Agent may resell the Collateral and such Grantor shall be credited with cash proceeds of the sale actually received by the Collateral Agent pursuant to the application of such proceeds under Section 7.02 of the Credit Agreement.

7.4 Investment Accounts. If any Event of Default shall have occurred and be continuing, the Collateral Agent may apply the balance (or portion thereof) from any Investment Account or instruct the bank or other financial institution at which any Investment Account is maintained to pay the balance (or portion thereof) of any Investment Account to or for the benefit of the Collateral Agent.

7.5 Investment Related Property. Each Grantor recognizes that, by reason of certain prohibitions contained in the Securities Act and applicable state securities laws, the Collateral Agent may be compelled, with respect to any sale of all or any part of the Investment Related Property conducted without prior registration or qualification of such Investment Related Property under the Securities Act and/or such state securities laws, to limit purchasers to those who will agree, among other things, to acquire the Investment Related Property for their own account, for investment and not with a view to the distribution or resale thereof. Each Grantor acknowledges that any such private sale may be at prices and on terms less favorable than those obtainable through a public sale without such restrictions (including a public offering made pursuant to a registration statement under the Securities Act) and, notwithstanding such circumstances, to the extent permitted by applicable law, each Grantor agrees that any such private sale, to the extent permitted by applicable law, shall be deemed to have been made in a commercially reasonable manner and that the Collateral Agent shall have no obligation to engage in public sales and no obligation to delay the sale of any Investment Related Property for the period of time necessary to permit the issuer thereof to register it for a form of public sale requiring registration under the Securities Act or under applicable state securities laws, even if such issuer would, or should, agree to so register it. If the Collateral Agent determines to exercise its right to sell any or all of the Investment Related Property after the occurrence and during the continuation of an Event of Default, upon written request, each Grantor shall and shall use commercially reasonable efforts to cause each issuer of any Pledged Stock to be sold hereunder, each partnership and each limited liability company from time to time to furnish to the Collateral Agent all such information as the Collateral Agent may request in order to determine the number and nature of interest, shares or other instruments included in the Investment Related Property which may be sold by the Collateral Agent in exempt transactions under the Securities Act and the rules and regulations of the Securities and Exchange Commission thereunder, as the same are from time to time in effect.

7.6 Intellectual Property.

(a) Anything contained herein to the contrary notwithstanding, upon the occurrence and during the continuation of an Event of Default:

(i) the Collateral Agent shall have the right (but not the obligation) to bring suit or otherwise commence any action or proceeding in the name of any Grantor, the Collateral Agent or otherwise, in the Collateral Agent's sole discretion, to enforce any Intellectual Property that constitutes Collateral, in which event such Grantor shall, at the request of the Collateral Agent, do any and all lawful acts and execute any and all documents required by the Collateral Agent in aid of such enforcement, and, to the extent that the Collateral Agent shall elect not to bring suit to enforce any Intellectual Property that constitutes Collateral as provided in this Section 7.6, each Grantor agrees to use reasonable measures, whether by action, suit, proceeding or otherwise, to prevent the infringement or other violation of any of such Grantor's rights in the Intellectual Property that constitutes Collateral by others;

(ii) upon written demand from the Collateral Agent or exercise of its rights under Section 6.1(f), each Grantor shall grant, assign, convey or otherwise transfer to the Collateral Agent or the Collateral Agent's designee all of such Grantor's right, title and interest in and to the Intellectual Property that constitutes Collateral and shall execute and deliver to the Collateral Agent such documents as are necessary or appropriate to carry out the intent and purposes of this Agreement which may include the right of Collateral Agent to (i) take and use or sell the Intellectual Property; and (ii) take and use or sell the goodwill of such Grantor's business symbolized by the Trademarks and the right to carry on the business and use the assets of such Grantor in connection with which the Trademarks or Domain Names have been used;

(iii) each Grantor agrees that such an assignment and/or recording shall be applied to reduce the Secured Obligations outstanding only to the extent that the Collateral Agent (or any Secured Party) receives cash proceeds in respect of the sale of, or other realization upon, the Intellectual Property that constitutes Collateral; and

(iv) upon any such assignment, each Grantor shall execute such further documents that the Collateral Agent may reasonably request to further confirm this and to transfer ownership of Intellectual Property and registrations and any pending applications in the United States Copyright Office, United States Patent and Trademark Office, equivalent office in a state of the United States or applicable Domain Name registrar to the Collateral Agent; and

(v) the Collateral Agent shall have the right to notify, or require each Grantor to notify, any obligors with respect to amounts due or to become due to such Grantor in respect of the Intellectual Property that constitutes Collateral, of the existence of the security interest created herein, to direct such obligors to make payment of all such amounts directly to the Collateral Agent, and, upon such notification and at the expense of such Grantor, to enforce collection of any such amounts and to adjust, settle or compromise the amount or payment thereof, in the same manner and to the same extent as such Grantor might have done.

(b) If (i) an Event of Default shall have occurred and, by reason of cure, waiver, modification, amendment or otherwise, no longer be continuing; (ii) no other Event of Default shall have occurred and be continuing; (iii) an assignment or other transfer to the Collateral Agent of any rights, title and interests in and to the Intellectual Property that constitutes Collateral shall have been previously made; and (iv) the Secured Obligations shall not have become immediately due and payable, then upon the written request of any Grantor, the Collateral Agent shall promptly execute and deliver to such Grantor, at such Grantor's sole cost and expense, such assignments or other transfer documents as may be necessary to reassign to such Grantor any such rights, title and interests as may have been assigned to the Collateral Agent as aforesaid, subject to any disposition thereof that may have been made by the Collateral Agent; provided that, after giving effect to such reassignment, the Collateral Agent's security interest granted pursuant hereto, as well as all other rights and remedies of the Collateral Agent granted hereunder, shall continue to be in full force and effect; and provided, further, the rights, title and interests so reassigned shall be free and clear of any other Liens granted by or on behalf of the Collateral Agent and the Secured Parties.

(c) Solely for the purpose of enabling the Collateral Agent to exercise rights and remedies under this Section 7.6 and at such time as the Collateral Agent shall be lawfully entitled to exercise such rights and remedies, each Grantor hereby grants to the Collateral Agent, to the extent it has the right to do so, an irrevocable, nonexclusive license (exercisable without payment of royalty or other compensation to such Grantor), subject, in the case of Trademarks, to sufficient rights to quality control and inspection in favor of such Grantor to avoid the risk of invalidation of said Trademarks, to use, operate under, license, or sublicense any Intellectual Property that constitutes Collateral now owned or hereafter acquired by such Grantor, and wherever the same may be located.

7.7 Cash Proceeds. In addition to the rights of the Collateral Agent specified in Section 4.3 with respect to payments of Receivables, during the continuance of an Event of Default and following a Grantor's receipt of notice from the Collateral Agent of its intention to exercise its rights under this Section 7.7, all proceeds of any Collateral received by any Grantor consisting of cash, checks and other non-cash items (collectively, "**Cash Proceeds**") shall be held by such Grantor in trust for the Collateral Agent, segregated from other funds of such Grantor, and shall, forthwith upon receipt by such Grantor, be turned over to the Collateral Agent in the exact form received by such Grantor (duly indorsed by such Grantor to the Collateral Agent, if required) and held by the Collateral Agent in an Investment Account (it being understood that each Grantor agrees to promptly comply with any reasonable request of the Collateral Agent to establish or enter into a Control Agreement with respect to such an Investment Account). Any Cash Proceeds received by the Collateral Agent (whether from a Grantor or otherwise) may, in the sole discretion of the Collateral Agent, (A) be held by the Collateral Agent for the ratable benefit of the Secured Parties, as collateral security for the Secured Obligations (whether matured or unmatured) and/or (B) be applied then or at any time thereafter by the Collateral Agent against the Secured Obligations then due and owing.

SECTION 8. COLLATERAL AGENT.

The Collateral Agent has been appointed to act as Collateral Agent hereunder by the Secured Parties. The Collateral Agent shall be obligated, and shall have the right hereunder, to make demands, to give notices, to exercise or refrain from exercising any rights or remedies, and to take or refrain from taking any action (including, without limitation, the release or substitution of Collateral), solely in accordance with this Agreement and the other Loan Documents. In furtherance of the foregoing provisions of this Section 8, each Secured Party, by its acceptance of the benefits hereof, agrees that it shall have no right individually to realize upon any of the Collateral hereunder, it being understood and agreed by such Secured Party that all rights and remedies hereunder may be exercised solely by the Collateral Agent for the benefit of the Secured Parties in accordance with the terms of this Section 8. The Collateral Agent may resign or be removed in accordance with Section 8.08 of the Credit Agreement. After the Collateral Agent's resignation thereunder as the Collateral Agent, the provisions of this Agreement shall inure to its benefit as to any actions taken or omitted to be taken by it under this Agreement while it was the Collateral Agent hereunder.

SECTION 9. CONTINUING SECURITY INTEREST; TRANSFER OF LOANS.

This Agreement shall create a continuing security interest in the Collateral and shall remain in full force and effect until the Termination Date and be binding upon each Grantor and its successors and assigns, and inure, together with the rights and remedies of the Collateral Agent hereunder, to the benefit of the Collateral Agent and its successors, transferees and assigns. No Grantor shall assign or delegate any of its rights or duties hereunder without the prior written consent of the Administrative Agent (acting with the consent of the requisite percentage of Lenders pursuant to the Credit Agreement), and any attempted assignment or delegation by a Grantor without such consent shall be null and void. Without limiting the generality of the foregoing, but subject to the terms of the Credit Agreement and the other Loan Documents, any Lender may assign or otherwise transfer any Loans held by it to any other Person, and such other Person shall thereupon become vested with all the benefits in respect thereof granted to the Lenders herein or otherwise. Upon the Termination Date, the security interest granted hereby shall automatically terminate hereunder and of record and all rights to the Collateral shall revert to the applicable Grantors. Upon any disposition by the Borrower or any other Loan Party of any assets or property that is permitted under the Loan Documents, the security interest granted hereby in such assets or property shall automatically terminate hereunder and of record and all rights to the Collateral to the extent of such assets or property shall revert to the applicable Grantors. Upon any such termination in the prior two sentences, the Collateral Agent shall, at the Grantors' expense (and without recourse to, and without any representation or warranty by, the Collateral Agent), execute and deliver to any Grantor such documents as such Grantor shall reasonably request to evidence such termination and promptly return any applicable possessory Collateral to the applicable Grantors.

SECTION 10. STANDARD OF CARE; COLLATERAL AGENT MAY PERFORM.

The powers conferred on the Collateral Agent hereunder are solely to protect its interest in the Collateral and shall not impose any duty upon it to exercise any such powers. Except for the exercise of reasonable care in the custody of any Collateral in its possession and the accounting for moneys actually received by it hereunder, the Collateral Agent shall have no duty as to any Collateral or as to the taking of any necessary steps to preserve rights against prior parties or any other rights pertaining to any Collateral. The Collateral Agent shall be deemed to have exercised reasonable care in the custody and preservation of Collateral in its possession if such Collateral is accorded treatment reasonably equal to that which the Collateral Agent accords its own property. Neither the Collateral Agent nor any of its directors, officers, employees or agents shall be liable for failure to demand, collect or realize upon all or any part of the Collateral or for any delay in doing so or shall be under any obligation to sell or otherwise dispose of any Collateral upon the request of any Grantor or otherwise. If an Event of Default occurs and is continuing and any Grantor fails to perform any agreement contained herein, the Collateral Agent may itself perform, or cause performance of, such agreement, and the expenses of the Collateral Agent incurred in connection therewith shall be payable by each Grantor under Section 9.05 of the Credit

Agreement and any analogous provision in any other Loan Document.

SECTION 11. MISCELLANEOUS.

11.1 General. Any notice, request or demand required or permitted to be given under this Agreement shall be given in accordance with Section 9.01 of the Credit Agreement; provided, that any such notice, request or demand to a Grantor shall be addressed to such Grantor at its notice address set forth on Schedule 4.1. No failure or delay on the part of the Collateral Agent in the exercise of any power, right or privilege hereunder or under any other Loan Document shall impair such power, right or privilege or be construed to be a waiver of any default or acquiescence therein, nor shall any single or partial exercise of any such power, right or privilege preclude other or further exercise thereof or of any other power, right or privilege. All rights and remedies existing under this Agreement and the other Loan Documents are cumulative to, and not exclusive of, any rights or remedies otherwise available. In case any provision in or obligation under this Agreement shall be invalid, illegal or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations, or of such provision or obligation in any other jurisdiction, shall not in any way be affected or impaired thereby. All covenants hereunder shall be given independent effect so that if a particular action or condition is not permitted by any of such covenants, the fact that it would be permitted by an exception to, or would otherwise be within the limitations of, another covenant shall not avoid the occurrence of a Default or an Event of Default if such action is taken or condition exists. This Agreement shall be binding upon and inure to the benefit of the Collateral Agent (for itself and for the benefit of the other Secured Parties) and the Grantors and their respective successors and assigns. No Grantor shall, without the prior written consent of the Administrative Agent given in accordance with the Credit Agreement and the other Loan Documents, assign any right, duty or obligation hereunder. This Agreement and the other Loan Documents embody the entire agreement and understanding between the Grantors, the Administrative Agent and the Collateral Agent and supersede all prior agreements and understandings between such parties relating to the subject matter hereof and thereof. Accordingly, the Loan Documents may not be contradicted by evidence of prior, contemporaneous or subsequent oral agreements of the parties. There are no unwritten or oral agreements between the parties. This Agreement may be executed in counterparts (and by different parties hereto on different counterparts), each of which shall be deemed an original but all of which when taken together shall constitute a single contract. Delivery of an executed signature page to this Agreement by facsimile transmission, "pdf" or similar electronic copy shall be as effective as delivery of a manually signed counterpart of this Agreement. Any party hereto may request an original counterpart of any party delivering such electronic counterpart. A set of the copies of this Agreement signed by all the parties shall be lodged with the Borrower and the Administrative Agent.

11.2 Waivers. Each Grantor hereby waives, for the benefit of the Secured Parties:

(a) any right to require any Secured Party, as a condition of payment or performance by such Grantor, to (i) proceed against the Borrower, any other Grantor or any other Person; (ii) proceed against or exhaust any security held from the Borrower, any other Grantor or any other Person; (iii) proceed against or have resort to any balance of any deposit account or credit on the books of any Secured Party in favor of the Borrower, any such other Grantor, or any other Person; or (iv) pursue any other remedy in the power of any Secured Party whatsoever;

(b) any defense (other than the defense of payment) arising by reason of the incapacity, lack of authority or any disability or other defense of the Borrower or any other Grantor including any defense based on or arising out of the lack of validity or the unenforceability of any of the Secured Obligations or any agreement or instrument relating thereto or by reason of the cessation of the liability of the Borrower or any other Grantor from any cause other than payment in full of all Secured Obligations;

(c) any defense based upon any statute or rule of law which provides that the obligation of a surety must be neither larger in amount nor in other respects more burdensome than that of the principal;

(d) any defense based upon any Secured Party's administrative errors or omissions, except behavior which amounts to gross negligence or willful misconduct (as determined by a court of competent jurisdiction in a final and non-appealable decision);

(e) (i) any principles or provisions of law, statutory or otherwise, which are or might be in conflict with the terms of this Agreement and any legal or equitable discharge of such Grantor's obligations hereunder; (ii) the benefit of any statute of limitations affecting such Grantor's liability hereunder or the enforcement hereof; (iii) any rights to set-offs, recoupments and counterclaims; and (iv) promptness, diligence and any requirement that any Secured Party protect, secure, perfect or insure any security interest or lien or

any property subject thereto;

(f) notices, demands, presentments, protests, notices of protest, notices of dishonor and notices of any action or inaction, including acceptance of this Agreement, notices of default under the Loan Documents, the Specified Cash Management Agreements or any agreement or instrument related thereto, notices of any renewal, extension or modification of the Secured Obligations or any agreement related thereto and notices of any extension of credit to the Borrower or any other Grantor;

(g) any defenses (other than the defense of payment) or benefits that may be derived from or afforded by law which limit the liability of or exonerate guarantors or sureties, or which may conflict with the terms of this Agreement;

(h) to the extent such waiver is not prohibited by Section 9-602 of the UCC, any defense based upon any Secured Party's failure to mitigate damages; and

(i) all rights to insist upon, plead or in any manner claim or take the benefit or advantage of any appraisal, valuation, stay, extension, marshaling of assets, redemption or similar law, or exemption, whether now or hereafter in force, which may delay, prevent or otherwise affect the performance by any Grantor of its obligations under, or the enforcement by any Secured Party of, this Agreement.

11.3 Governing Law. THIS AGREEMENT AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER SHALL BE CONSTRUED IN ACCORDANCE WITH, AND GOVERNED BY, THE LAWS OF THE STATE OF NEW YORK (WITHOUT REGARD TO CONFLICT OF LAWS PROVISIONS THAT WOULD RESULT IN THE APPLICATION OF LAWS OTHER THAN THE LAWS OF THE STATE OF NEW YORK (OTHER THAN ANY MANDATORY PROVISIONS OF THE UCC RELATING TO THE LAW GOVERNING PERFECTION AND THE EFFECT OF PERFECTION OF THE SECURITY INTERESTS GRANTED HEREUNDER)).

11.4 Regulatory Matters. Notwithstanding anything to the contrary set forth in this Agreement or any other Loan Document, the Collateral Agent, on behalf of the Secured Parties, acknowledges and agrees that its rights, remedies and powers under this Agreement (including its exercise of remedial rights upon Collateral and voting of equity interests in (or otherwise taking control of) Persons licensed by the Gaming Authorities and/or under Gaming Laws), may be exercised only to the extent that (i) the exercise thereof does not violate any applicable laws, rules and regulations of the Gaming Authorities, including Gaming Laws, and (ii) all necessary approvals, licenses and consents from the Gaming Authorities required in connection therewith are obtained. Notwithstanding any other provision of this Agreement, the Grantors expressly authorize the Collateral Agent and the other Secured Parties to cooperate with the applicable Gaming Authorities in connection with the administration of their regulatory jurisdiction over each Grantor and the Borrower, including, without limitation, to the extent not inconsistent with the internal policies of such Collateral Agent or Secured Party and any applicable legal or regulatory restrictions, the provision of such documents or other information as may be requested by any such Gaming Authorities relating to the Collateral Agent, any Grantor or the Borrower, or the Loan Documents. The parties acknowledge that the provisions of this Section 11.4 shall not be for the benefit of any Grantor, the Borrower or any other Person.

11.5 Updates to Disclosure Schedules. Upon delivery of any duly completed and executed Pledge Supplement in accordance with the terms hereof, the applicable Schedules hereto shall be deemed to have been updated as provided therein. Except as otherwise set forth herein, the Grantors may execute at any time and deliver to the Collateral Agent and the Administrative Agent a completed and executed Pledge Supplement.

11.6 Consent to Jurisdiction and Waiver of Jury Trial. **THE PROVISIONS OF (A) IN THE CASE OF THE BORROWER, THE CREDIT AGREEMENT AND THE OTHER LOAN DOCUMENTS AND (B) IN THE CASE OF EACH OTHER GRANTOR, THE SUBSIDIARY GUARANTY UNDER THE HEADINGS "CONSENT TO JURISDICTION" AND "WAIVER OF JURY TRIAL" ARE INCORPORATED HEREIN BY THIS REFERENCE AND SUCH INCORPORATION SHALL SURVIVE ANY TERMINATION OF THE CREDIT AGREEMENT, THE OTHER LOAN DOCUMENTS OR THE SUBSIDIARY GUARANTY.**

11.7 Reinstatement. This Agreement shall continue to be effective or be reinstated, as the case may be, if at any time any amount received by the Collateral Agent or any other Secured Party hereunder or pursuant hereto is rescinded or must otherwise be

restored or returned by the Collateral Agent or such Secured Party upon the occurrence of any proceeding, voluntary or involuntary, involving the bankruptcy, reorganization, insolvency, receivership, liquidation or other similar arrangement affecting any Grantor, the Borrower or any Subsidiary of the Borrower or upon the appointment of any intervenor or conservator of, or trustee or similar official for, any Grantor, the Borrower or any Subsidiary of the Borrower or any substantial part of any Grantor's, the Borrower's or any Subsidiary of the Borrower's assets, or upon the entry of an order by any court avoiding the payment of such amount, or otherwise, all as though such payments had not been made.

11.8 Amendments. Subject to the last sentence of Section 8.02 of the Credit Agreement, no waiver, amendment, modification or termination of any provision of this Agreement, or consent to any departure by the Grantors therefrom, shall in any event be effective without the prior written consent of each Grantor party hereto and either (x) the Required Lenders or (y) the Collateral Agent (acting at the direction of the Required Lenders).

11.9 Intercreditor Agreement. All rights and remedies of the Collateral Agent hereunder are, as between the Administrative Agents (as defined in the Intercreditor Agreement) and the Collateral Agents (as defined in the Intercreditor Agreement), subject to the terms of the Intercreditor Agreement. This provision is for the benefit of, and may be enforced exclusively by, the Administrative Agents and the Collateral Agents only. For the avoidance of doubt, this provision is not for the benefit of any Grantor and may not, under any circumstances, be enforced by any Grantor.

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, each Grantor and the Collateral Agent have caused this Agreement to be duly executed and delivered by their respective officers thereunto duly authorized as of the date first written above.

MONTREIGN OPERATING COMPANY, LLC,
a New York limited liability company

By: /s/ Joseph A. D'Amato
Name: Joseph A. D'Amato
Title: President

EMPIRE RESORTS REAL ESTATE I, LLC,
a New York limited liability company

By: /s/ Joseph A. D'Amato
Name: Joseph A. D'Amato
Title: President

EMPIRE RESORTS REAL ESTATE II, LLC,
a New York limited liability company

By: /s/ Joseph A. D'Amato
Name: Joseph A. D'Amato
Title: President

FIFTH THIRD BANK,
as Collateral Agent

By: /s/ Knight D. Kieffer
Name: Knight D. Kieffer
Title: Vice President

EXHIBIT 10.56

EQUITY PLEDGE AGREEMENT

dated as of January 24, 2017

by

MONTREIGN HOLDING COMPANY, LLC,
as Pledgor

and

FIFTH THIRD BANK,
as Collateral Agent

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EQUITY PLEDGE AGREEMENT

This EQUITY PLEDGE AGREEMENT (as amended, amended and restated, supplemented or otherwise modified from time to time, this "**Agreement**"), dated as of January 24, 2017, is entered into by and between MONTREIGN HOLDING COMPANY, LLC, a New York limited liability company (the " **Pledgor**"), and FIFTH THIRD BANK, in its capacity as collateral agent for the benefit of the Secured Parties (together with its successors and assigns in such capacity, the "**Collateral Agent**").

RECITALS

A. Montreign Operating Company, LLC, a New York limited liability company (the " **Borrower**"), has entered into that certain Revolving Credit Agreement, dated as of the date hereof (as amended, amended and restated, supplemented or otherwise modified from time to time, the "**Credit Agreement**"), by and among the Borrower, the banks, financial institutions and other entities from time to time party thereto in the capacity of lenders (the "**Lenders**"), and Fifth Third Bank, as administrative agent (together with its successors and assigns in such capacity, the "**Administrative Agent**").

B. Subject to the terms and conditions of the Credit Agreement, certain Loan Parties may enter into one or more Specified Cash Management Agreements with one or more counterparties to a Specified Cash Management Agreement.

C. The Pledgor owns 100% of the membership interests of the Borrower, and the Pledgor will receive substantial benefit from the making of the Loans to the Borrower pursuant to the terms of the Credit Agreement and the other Loan Documents.

D. It is a condition precedent to the effectiveness of the Credit Agreement and the other Loan Documents that this Agreement be executed and delivered by the Pledgor.

AGREEMENT

NOW, THEREFORE, in consideration of the premises herein and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Pledgor and Collateral Agent, for the benefit of the Secured Parties, hereby agree as follows:

SECTION 1. DEFINITIONS; RULES OF CONSTRUCTION

1.1 Definitions. The following terms shall have the following respective meanings:

"**Administrative Agent**" shall have the meaning given in the recitals.

"**Agreement**" shall have the meaning given in the preamble.

"**Bankruptcy Code**" shall mean Title 11 of the United States Code entitled "Bankruptcy" as now and hereafter in effect, or any successor statute.

"**Borrower**" shall have the meaning given in the recitals.

"**Borrower LLC Agreement**" shall mean the Amended and Restated Operating Agreement of Montreign Operating Company, LLC, a New York Limited Liability Company, dated as of November 2, 2016, as amended, amended and restated, supplemented or otherwise modified from time to time in accordance with the terms hereof and thereof.

"**Collateral Agent**" shall have the meaning given in the preamble.

"**Credit Agreement**" shall have the meaning given in the recitals.

"**Financing Statements**" shall mean all financing statements, recordings, filings or other instruments of registration necessary or appropriate to perfect a security interest or Lien by filing in any appropriate filing or recording office in accordance with the UCC or any other relevant applicable law.

"**Governing Agreements**" shall mean, collectively, the Certificate of Formation of the Borrower and the Borrower LLC Agreement.

"**Lenders**" shall have the meaning given in the recitals.

"**Membership Interests**" shall have the meaning ascribed thereto in Section 2.1(a).

"**Permitted Liens**" shall mean Liens of the types described in clauses (a), (b), (s), (x) and (bb) of Section 6.02 of the Credit Agreement; provided that for purposes of this definition any reference in such clauses to "Loan Party" or "Loan Parties" shall mean and include the Pledgor.

"**Pledged Collateral**" shall have the meaning ascribed thereto in Section 2.1(a).

"**Pledgor**" shall have the meaning given in the preamble.

"**Secured Obligations**" shall have the meaning ascribed thereto in Section 2.1(a).

"**Termination Date**" shall mean the date on which all Secured Obligations have been "paid in full" as such term is defined in the Credit Agreement.

"**UCC**" shall mean the Uniform Commercial Code as the same may, from time to time, be in effect in the State of New York; provided, however, in the event that, by reason of mandatory

provisions of law, any or all of the perfection or priority of the security interest in any Pledged Collateral is governed by the Uniform Commercial Code as in effect in a jurisdiction other than the State of New York, the term "UCC" shall mean the Uniform Commercial Code as in effect in such other jurisdiction for purposes of the provisions hereof relating to such perfection or priority and for purposes of definitions related to such provisions.

Capitalized terms used but not otherwise defined herein shall have the meanings assigned to such terms in the Credit Agreement.

1.2 Rules of Construction. Except as otherwise provided herein or unless the context otherwise requires, the rules of construction set forth in Sections 1.02 through 1.08 of the Credit Agreement, including with respect to the meaning of the expressions "payment in full," "paid in full" and any other similar terms or phrases, shall be applicable to this Agreement *mutatis mutandis*. If any conflict or inconsistency exists between this Agreement and the Credit Agreement, the Credit Agreement shall govern. All references herein to provisions of the UCC shall include all successor provisions under any subsequent version or amendment to any Article of the UCC. Except as expressly specified otherwise herein, any reference herein to any Exhibit or Schedule to this Agreement shall be deemed to refer to such Exhibit or Schedule as amended or supplemented from time to time.

SECTION 2. PLEDGE

2.1 Pledged Collateral.

(a) Subject to Section 2.1(c), the Pledgor hereby irrevocably and unconditionally guarantees to the Collateral Agent, for the ratable benefit of the Secured Parties, the prompt and complete payment and performance in full when due, whether at stated maturity, by required prepayment, declaration, acceleration, demand or otherwise (including the payment of amounts which would become due but for the operation of the automatic stay under Section 362(a) of the Bankruptcy Code), of all of the Obligations, whether now existing or hereafter arising and howsoever evidenced (the "**Secured Obligations**"). Notwithstanding any provision hereof or in any other Loan Document to the contrary, the Secured Obligations of the Pledgor shall not include any Excluded Swap Obligations (as defined in the Pledge and Security Agreement). The Pledgor hereby assigns as collateral security to the Collateral Agent (for the ratable benefit of the Secured Parties), and hereby grants to the Collateral Agent (for the ratable benefit of the Secured Parties), a security interest in and continuing lien on, all of the Pledgor's right, title and interest in, to and under all of the following, in each case whether now owned or existing or hereafter acquired or arising and wherever located (collectively, the "**Pledged Collateral**"), as security for the prompt and complete payment and performance when due and with all rights and remedies under the UCC and other

applicable law (whether at stated maturity, by required prepayment, declaration, acceleration, demand or otherwise) of the Secured Obligations:

Any and all membership interests, limited liability company interests, member's interests, equity interests, and other Capital Stock owned directly by the Pledgor, whether now owned or subsequently acquired, in the Borrower (collectively, the "**Membership Interests**"), including, without limitation, all such interests as are described on Exhibit A hereto, the certificates representing such interests and (i) the Pledgor's share of all rights to receive income, gain, profit, loss or other items allocated or distributed to the Pledgor under the Governing Agreements; (ii) all rights of the Pledgor to receive all income, profit or other dividends, distributions, cash, warrants, rights, options, instruments, securities and other property of any nature whatsoever of the Pledgor with respect to such interests; (iii) all of the Pledgor's capital or membership interest, including any capital accounts, in the Borrower, and all accounts, deposits or credits of any kind with the Borrower; (iv) all of the Pledgor's voting rights or rights to control or direct the affairs of the Borrower; (v) all of the Pledgor's right, title and interest in the Borrower as such rights are derived from the Membership Interests, including any interest of the Pledgor in the entries of the books of the Borrower; (vi) all other right, title and interest in or to the Borrower as such rights are derived from the Membership Interests; (vii) all claims of the Pledgor for damages arising out of a breach of or a default relating to the property described in this Section 2.1; (viii) all rights of the Pledgor to terminate, amend, modify, supplement or waive performance under the Governing Agreements, to perform thereunder and to compel performance and otherwise exercise the remedies thereunder; and (ix) all of the proceeds of any and all of the above. Notwithstanding anything herein to the contrary, in no event shall the security interest granted under Section 2.1(a) attach to any Excluded Collateral, and Pledged Collateral shall not include any Excluded Collateral.

(b) As used herein, the term "proceeds" shall be construed in its broadest sense and shall include whatever is received or receivable when any of the Pledged Collateral, or any proceeds thereof, are sold, collected, exchanged or otherwise disposed of, whether voluntarily or involuntarily, and shall include, without limitation, all rights to payment, including interest and premiums, with respect to any such Pledged Collateral or any proceeds thereof.

(c) Notwithstanding anything to the contrary contained in this Agreement, recourse of the Collateral Agent and the Secured Parties to the Pledgor under this Agreement shall be limited solely to the Pledged Collateral. No assets of the Pledgor other than the Pledged Collateral shall be available to satisfy any liability of the Pledgor arising under this Agreement, whether under this Section 2 or otherwise. The rights of the Collateral Agent and the Secured Parties to satisfy the obligations of the Pledgor pursuant to this Agreement shall be limited solely to the foreclosure and other remedies in respect of (and all other rights and remedies relating to the foreclosure and other remedies in respect of) the Lien created hereby and the Collateral Agent and the Secured Parties shall have no right to proceed directly against the Pledgor for the

satisfaction of any Secured Obligation or for any deficiency remaining after the foreclosure and other remedies in respect of the Lien created hereunder or any portion thereof. The Collateral Agent and the Secured Parties, by accepting this Agreement, agree that they shall not sue for, seek or demand any deficiency judgment against the Pledgor in any action or proceeding under, or by reason of or in connection with this Agreement.

2.2 Delivery of Certificates and Instruments. All certificates or instruments representing or evidencing the Pledged Collateral, if any, shall be delivered to and held by or on behalf of the Collateral Agent in accordance with Section 4.6 and subject to Section 6.22, and shall be in suitable form for transfer by delivery, or shall be accompanied by duly executed, undated instruments of transfer or assignment in blank, all in form and substance reasonably satisfactory to the Collateral Agent. Subject to Section 6.22, the Collateral Agent shall have the right, at any time following the occurrence and during the continuation of an Event of Default, without notice to the Pledgor, to transfer or to register in its name or in the name of any of its nominees any or all of the Pledged Collateral. In addition, the Collateral Agent shall have the right at any time following the occurrence and during the continuation of an Event of Default to exchange certificates or instruments representing or evidencing any of the Membership Interests for certificates or instruments of smaller or larger denominations, and the Pledgor shall cause the Borrower to comply with any such requests of the Collateral Agent. Until the Secured Obligations have been paid in full and subject to the Intercreditor Agreement, any obligation of Pledgor in this Agreement that requires (or any representation or warranty hereunder to the extent that it would have the effect of requiring) delivery of any certificate or instruments representing Pledged Collateral (including any endorsements related thereto) to the Collateral Agent shall be deemed complied with and satisfied (or, in the case of any representation or warranty hereunder, shall be deemed to be true) if such delivery of such Pledged Collateral is made to, or such possession is with, the Term Loan Collateral Agent.

2.3 Pledgor's Rights.

(a) Voting Rights.

(i) Unless an Event of Default shall have occurred and be continuing, and the Collateral Agent shall have notified the Pledgor in writing that its rights under this Section 2.3 are being suspended, the Pledgor shall be entitled to exercise all voting and other rights with respect to the Pledged Collateral. The Collateral Agent shall execute and deliver to the Pledgor, or cause to be executed and delivered to the Pledgor, all such proxies, powers of attorney, certificates and other instruments as the Pledgor may reasonably request for the purpose of enabling the Pledgor to exercise the voting and/or rights and powers the Pledgor is entitled to exercise pursuant to this clause (i).

(ii) Upon the occurrence and during the continuation of an Event of Default, after the Collateral Agent shall have notified the Pledgor in writing of the suspension of its rights under this Section 2.3, then, subject to Section 6.22, all voting and other rights of the Pledgor with respect to the Pledged Collateral which the Pledgor would otherwise be entitled to exercise pursuant to the terms of this Agreement or otherwise shall cease, and all such rights shall be vested in the Collateral Agent which shall thereupon have the sole right to exercise such rights. After all Events of Default have been cured or waived and the Pledgor has delivered to the Collateral Agent a certificate to that effect, the Pledgor's rights under this Section 2.3 shall be reinstated.

(b) Distributions.

(i) Unless an Event of Default shall have occurred and be continuing and the Collateral Agent shall have notified the Pledgor in writing that its rights under this Section 2.3 (although no such notice shall be required if an Event of Default under Section 7.01(h) or (i) of the Credit Agreement has occurred and is continuing) are being suspended, the Pledgor shall be entitled to receive and retain any and all dividends, interest, principal and other distributions paid on or distributed in respect of the Pledged Collateral to the extent and only to the extent that all such dividends, interest, principal and other distributions are permitted by, and otherwise paid or distributed in accordance with, the terms and conditions of the Loan Documents.

(ii) Upon the occurrence and during the continuation of an Event of Default, after the Collateral Agent shall have notified the Pledgor in writing of the suspension of its rights under this Section 2.3 (although no such notice shall be required if an Event of Default under Section 7.01(h) or (i) of the Credit Agreement has occurred and is continuing), then, subject to Section 6.22, all rights of the Pledgor to the dividends, interest, principal and other distributions shall cease and all such rights shall be vested in the Collateral Agent which shall thereupon have the sole right to receive all such dividends, interest accrued and other distributions provided that, notwithstanding the occurrence and continuance of an Event of Default, the Pledgor may continue to receive dividends and distributions made pursuant to subclause (b) and subclause (c) of Section 6.05 of the Credit Agreement; provided however that the forgoing shall in no event be construed to amend, modify, supplement or restrict the Collateral Agent's and the other Secured Parties' rights to exercise remedial rights pursuant to the Loan Documents (including rights to issue directions and otherwise act under Control Agreements). After all Events of Defaults have been cured or waived and the Pledgor has delivered to the Collateral Agent a certificate to that effect, the Pledgor's rights under this Section 2.3 shall be reinstated.

(c) Turnover. All distributions and other amounts which are received by the Pledgor contrary to the provisions of this Agreement or the other Loan Documents shall be received in trust for the benefit of the Collateral Agent, shall be segregated from other funds of the Pledgor and shall be paid over to the Collateral Agent as Pledged Collateral in the same form as so received (with any necessary endorsement requested by the Collateral Agent).

2.4 Secured Parties Not Liable. Notwithstanding any other provision contained in this Agreement, the Pledgor shall remain liable under the Governing Agreements to observe and perform all of the conditions and obligations to be observed and performed by the Pledgor thereunder. None of the Collateral Agent, any other Secured Party or any of their respective directors, officers, employees, affiliates or agents shall have any obligations or liability under or with respect to any Pledged Collateral by reason of or arising out of this Agreement (except as set forth in Section 9-207 of the UCC) or the receipt by the Collateral Agent of any payment relating to any Pledged Collateral, nor shall any of the Collateral Agent, any other Secured Party or any of their respective directors, officers, employees, affiliates or agents be obligated in any manner to (a) perform any of the obligations of the Pledgor under or pursuant to the Governing Agreements or any other agreement to which the Pledgor is a party; (b) make any payment or inquire as to the nature or sufficiency of any payment or performance with respect to any Pledged Collateral; (c) present or file any claim or collect the payment of any amounts or take any action to enforce any performance with respect to the Pledged Collateral; or (d) take any other action whatsoever with respect to the Pledged Collateral other than as expressly provided for herein.

2.5 Attorney-in-Fact.

(a) Subject to Section 6.22 and until the Termination Date, the Pledgor hereby appoints the Collateral Agent (such appointment being coupled with an interest), on behalf of the Secured Parties, or any Person, officer or agent whom the Collateral Agent may designate, as its true and lawful attorney-in-fact and proxy, with full irrevocable power and authority in the place and stead of the Pledgor and in the name of the Pledgor or in its own name, at the Pledgor's cost and expense, to the extent reasonable, from time to time to take any action and to execute any instrument which may be reasonably necessary to enforce its rights under this Agreement, including, without limitation, authority to receive, endorse and collect all instruments made payable to the Pledgor representing any distribution, interest payment or other payment in respect of the Pledged Collateral or any part thereof to be paid over to the Collateral Agent pursuant to Section 2.3(b)(ii) and to give full discharge for the same. Notwithstanding anything in this Section 2.5(a) to the contrary, the Collateral Agent shall not exercise any of the rights as attorney-in-fact or proxy provided for in this Section 2.5(a) unless and until an Event of Default has occurred and is continuing.

(b) The Pledgor hereby acknowledges and agrees that the Collateral Agent shall have no fiduciary duties to the Pledgor in acting pursuant to this power-of-attorney and the Pledgor hereby waives any claims or rights of a beneficiary of a fiduciary relationship hereunder.

2.6 Collateral Agent May Perform. If the Pledgor fails to perform any agreement contained herein after receipt of a written request to do so from the Collateral Agent after the occurrence and during the continuance of any Event of Default, the Collateral Agent may (but shall not be obligated to) itself perform, or cause performance of, such agreement, and the expenses of the Collateral Agent, including the reasonable and documented fees and expenses of its counsel, incurred in connection therewith shall be payable by the Borrower under Section 9.05 of the Credit Agreement; provided that if any case or proceeding under any Debtor Relief Law shall have occurred with respect to the Pledgor, the written request described in this Section 2.6 shall not be required and shall be deemed to have been received by the Pledgor upon the failure of the Pledgor to perform such agreement.

2.7 Reasonable Care. The Collateral Agent shall be deemed to have exercised reasonable care in the custody and preservation of the Pledged Collateral in its possession if the Pledged Collateral is accorded treatment reasonably equivalent to that which the Collateral Agent accords its own property of the type of which the Pledged Collateral consists, it being understood that the Collateral Agent shall have no responsibility for (a) ascertaining or taking action with respect to calls, conversions, exchanges, maturities, tenders or other matters relative to any Pledged Collateral, whether or not the Collateral Agent has or is deemed to have knowledge of such matters or (b) taking any necessary steps to preserve rights against any parties with respect to any Pledged Collateral.

2.8 Security Interest Absolute. All rights and security interests of the Collateral Agent purported to be granted hereunder, and all obligations of the Pledgor hereunder, shall be absolute and unconditional irrespective of:

(a) any lack of validity or enforceability of any of the Loan Documents, the Specified Cash Management Agreements or any other agreement or instrument relating thereto;

(b) any change in the time, manner or place of payment of, or in any other term of, all or any of the Secured Obligations, or any other amendment or waiver of or any consent to any departure from the Loan Documents, the Specified Cash Management Agreements or any other agreement or instrument relating thereto;

(c) any exchange, release or non-perfection of any other collateral, or any release, amendment or waiver of, or consent to any departure from, any guaranty, for all or any of the Secured Obligations;

(d) any bankruptcy or insolvency of the Borrower, the Pledgor or any other Person; or

(e) any other circumstance which might otherwise constitute a defense available to, or a discharge of, the Pledgor or any third-party pledgor (other than the defense of payment).

SECTION 3. REPRESENTATIONS AND WARRANTIES

The Pledgor represents and warrants to the Collateral Agent for its benefit and the benefit of the Secured Parties, as of the Closing Date, as follows, which representations and warranties shall survive the execution and delivery of this Agreement:

3.1 Organization; Powers and Authority

3.2 Valid Security Interest. This Agreement is effective to create in favor of the Collateral Agent, for the ratable benefit of the Secured Parties, a legal, valid, binding and enforceable security interest (except as enforceability may be subject to applicable Debtor Relief Laws or other similar laws affecting creditors' rights generally and subject to general principles of equity, regardless of whether considered in a proceeding in equity or at law) in the Pledged Collateral and proceeds thereof and, upon the filing of UCC financing statements, naming the Pledgor as "debtor" and the Collateral Agent as "secured party" and describing the Pledged Collateral, in the office of the Secretary of State of New York, the security interest of the Collateral Agent in the Pledged Collateral and the proceeds thereof that can be perfected by the filing of a financing statement under the UCC will constitute a valid, perfected, first priority Lien (subject to, in all cases other than priority, only Permitted Liens). When Pledged Collateral constituting "certificated securities" (as defined in the UCC) is delivered to the Collateral Agent, together with instruments of transfer duly endorsed in blank, this Agreement will create a first priority perfected security interest (subject to, in all cases after their priority, only Permitted Liens) in all right, title and interest of the Pledgor in such certificated securities.

3.3 No Liens. The Pledgor is the owner of all of its right, title and interest in the Pledged Collateral free from any Liens other than the Liens created pursuant to this Agreement, other Permitted Liens and Liens created under the Term Facility Documents (subject to the Intercreditor Agreement). No Person other than the Pledgor has any right, title or interest in or to the Pledged Collateral, other than Permitted Liens.

3.4 Certificated Securities. The Membership Interests are "certificated securities" as defined in the UCC.

3.5 Location of Records/Chief Executive Office. As of the date hereof, the chief executive office of the Pledgor and the office location where the Pledgor keeps its records concerning the Pledged Collateral is located at:

Montreign Holding Company, LLC
204 Route 17B
Monticello, NY 12701
Facsimile: (845) 807-0000

The Pledgor's taxpayer identification number is 81-4849588 and the Pledgor's organizational identification number with the State of New York is 170103010830.

3.6 Consents, Etc. Subject to Section 6.22, no consent, authorization, approval or other action by, and no notice to or filing with, any governmental authority or any other Person is required either (a) for the pledge by the Pledgor of the Pledged Collateral pursuant to this Agreement or for the due execution, delivery or performance of this Agreement by the Pledgor (other than such consents, authorizations, approvals or other actions obtained on or prior to the date hereof) or (b) subject to Section 6.22, for the exercise by the Collateral Agent of the voting or other rights provided for in this Agreement or of the remedies in respect of the Pledged Collateral pursuant to this Agreement, except (i) in the case of clause (b), as may be required under Gaming Laws and in connection with the disposition of the Pledged Collateral by laws affecting the offering and sale of securities generally and (ii) such consents, approvals, registrations, filings, Permits, notices or other actions (including, without limitation, all Gaming Licenses and other necessary regulatory and gaming approvals and shareholder approvals), as have been made or obtained and are in full force and effect.

3.7 Name. The full legal name of the Pledgor is Montreign Holding Company, LLC, as indicated on the public record of the State of New York. The Pledgor does not, and has not during the previous five years, used any other name or maintained its chief executive office outside of the State referenced in Section 3.5 above.

3.8 Interests in Borrower. The Pledgor owns 100% of the ownership interests of the Borrower.

3.9 Valid Agreement. This Agreement has been duly authorized, executed and delivered by the Pledgor and constitutes a legal, valid and binding obligation of the Pledgor, enforceable against the Pledgor in accordance with its terms except as enforceability may be limited by applicable Gaming Laws and applicable bankruptcy, insolvency, or similar laws affecting the enforcement of creditor's rights generally or by equitable principles relating to enforceability.

3.10 No Conflict. Subject to Section 6.22, neither the execution and delivery hereof nor the consummation of the transactions contemplated hereby nor the compliance with the terms hereof (a) does or will contravene the Pledgor's formation documents or any other legal requirement in any material respect then applicable to or binding on Pledgor or (b) does or will contravene or result in any breach or constitute any default under, or result in or require the creation of any Lien upon any of Pledgor's properties or under any material agreement or instrument to which Pledgor is a party or by which it or any of its material properties may be bound except as contemplated by this Agreement.

SECTION 4. COVENANTS

The Pledgor hereby covenants and agrees from and after the date of this Agreement until the termination of this Agreement in accordance with the provisions of Section 6.9:

4.1 Sale of Pledged Collateral. Except as permitted under the Loan Documents, the Pledgor shall not sell or otherwise dispose of, or grant any option or warrant with respect to, any of the Pledged Collateral.

4.2 No Other Liens. The Pledgor shall not create, incur or permit to exist, shall defend the Pledged Collateral against and shall take such other action as is reasonably necessary to remove, any Lien or claim on or to the Pledged Collateral, other than the Lien created pursuant to this Agreement, other Permitted Liens and Liens created under the Term Facility Documents (subject to the Intercreditor Agreement), and subject to such Permitted Liens and Liens created under the Term Facility Documents, shall defend the right, title and interest of the Collateral Agent in and to the Pledged Collateral against the claims and demands of all Persons whomsoever.

4.3 Principal Office. The Pledgor shall not establish a new location for its chief executive office, change its state of formation or change its name until (i) it has given to the Collateral Agent and the Administrative Agent not less than ten (10) days prior written notice of its intention so to do, clearly describing such new location or specifying such new name, as the case may be, and (ii) with respect to such new location or such new name, as the case may be, it shall have taken all action necessary to maintain the security interest of the Collateral Agent in the Pledged Collateral intended to be granted hereby at all times fully perfected and in full force and effect.

4.4 Supplements; Further Assurances, etc. The Pledgor shall, at any time and from time to time, at the expense of the Pledgor, promptly execute and deliver all further instruments and documents, and take all further action, that the Collateral Agent or the Administrative Agent may reasonably request, in order to perfect any security interest granted or purported to be granted hereby in the Pledged Collateral or to enable the Collateral Agent to exercise and enforce its rights and remedies hereunder with respect to any Pledged Collateral.

4.5 Amendment of Governing Agreements. Except as permitted under the Loan Documents, the Pledgor shall not, without the prior written consent of the Collateral Agent, permit (a) the cancellation or termination of any Governing Agreement or (b) any amendment, supplement or modification of, or waiver with respect to any of the provisions of, any Governing Agreement that would have a material and adverse effect on either (i) the rights of the Collateral Agent under this Agreement or (ii) the Pledged Collateral.

4.6 Certificates and Instruments. The Pledgor shall cause the Membership Interests to be "certificated securities" (within the meaning of the UCC) at all times during the term of this Agreement. The Pledgor shall deliver all certificates or other documents representing the Pledged Collateral to the Collateral Agent with all necessary instruments of transfer or assignment duly indorsed in blank. In the event the Pledgor obtains possession of any certificates, or any securities or instruments forming a part of the Pledged Collateral, the Pledgor shall promptly deliver the same to the Collateral Agent together with all necessary instruments of transfer or assignment duly indorsed in blank. Prior to any such delivery, any Pledged Collateral in the Pledgor's possession shall be held by the Pledgor in trust for the Collateral Agent. The Pledgor shall execute and deliver to the Collateral Agent an irrevocable proxy in the form attached hereto as Exhibit B and an irrevocable power in the form attached hereto as Exhibit C with respect to the Membership Interests of the Borrower owned by the Pledgor.

4.7 Financing Statements. The Pledgor shall, at the reasonable request of the Collateral Agent, deliver to the Collateral Agent and the Administrative Agent such Financing Statements (or similar statements or instruments of registration under the law of any jurisdiction) as are necessary or, in the reasonable opinion of the Collateral Agent, desirable to establish and maintain the security interests contemplated hereunder as valid, enforceable, first priority security interests as provided herein and the other rights and security contemplated herein, all in accordance with the UCC or any other applicable law, subject to any Permitted Liens and evidence that such Financing Statements have been filed with the [Delaware] [New York] Secretary of State. The Borrower shall pay any applicable filing fees and related expenses. The Pledgor authorizes the Collateral Agent to file any such Financing Statements (or similar statements or instruments of registration under the law of any jurisdiction) without the signature of the Pledgor; provided, however, the foregoing does not create any obligation on the part of the Collateral Agent to file any Financing Statements.

4.8 Improper Distributions. Notwithstanding any other provision contained in this Agreement, the Pledgor shall not accept any distributions, dividends or other payments (or any collateral in lieu thereof) in respect of the Pledged Collateral, except to the extent the same are permitted by the terms of this Agreement and the other Loan Documents.

4.9 Additional Covenants. The Pledgor agrees to comply, and shall comply, with Section 6.18 of the Credit Agreement as if such Section was fully set forth herein.

SECTION 5. EXERCISE OF REMEDIES UPON AN EVENT OF DEFAULT

5.1 Remedies Generally. If an Event of Default shall have occurred and be continuing, the Collateral Agent may exercise, in addition to all other rights and remedies granted in this Agreement and in any other instrument or agreement securing, evidencing or relating to the Secured Obligations, all rights and remedies of a secured party under the UCC and all other rights and remedies available at law or in equity, in each case subject to and in accordance with the Credit Agreement and the other Loan Documents and solely with respect to the Pledged Collateral.

5.2 Sale of Pledged Collateral. Subject to Section 6.22:

(a) Without limiting the generality of Section 5.1, if an Event of Default shall have occurred and be continuing, the Collateral Agent may, without notice except as specified below, sell the Pledged Collateral or any part thereof in one or more parcels at public or private sale or at any of the Collateral Agent's corporate trust offices or elsewhere, for cash, on credit or for future delivery, irrespective of the impact of any such sales on the market price of the Pledged Collateral at any such sale. Each purchaser at any such sale shall hold the property sold absolutely, free from any claim or right on the part of the Pledgor, and the Pledgor hereby waives (to the extent permitted by law) all rights of redemption, stay and/or appraisal which the Pledgor now has or may at any time in the future have under any rule of law or statute now existing or hereafter enacted. The Pledgor agrees that at least ten (10) days' notice to the Pledgor of the time and place of any public sale or the time after which any private sale is to be made shall constitute reasonable notification. The Collateral Agent shall not be obligated to make any sale of Pledged Collateral regardless of notice of sale having been given. The Collateral Agent may adjourn any public or private sale from time to time by announcement at the time and place fixed therefor, and such sale may, without further notice, be made at the time and place to which it was so adjourned. The Pledgor hereby waives any claims against the Collateral Agent arising by reason of the fact that the price at which any Pledged Collateral may have been sold at such a private sale was less than the price which might have been obtained at a public sale, even if the Collateral Agent accepts the first offer received and does not offer such Pledged Collateral to more than one offeree so long as such process is commercially reasonable.

(b) The Pledgor recognizes that, if an Event of Default shall have occurred and be continuing, the Collateral Agent may elect to sell all or any part of the Pledged Collateral to one or more purchasers in privately negotiated transactions in which the purchasers will be obligated to agree, among other things, to acquire the Pledged Collateral for their own account, for investment and not with a view to the distribution or resale thereof. The Pledgor acknowledges that any such private sales may be at prices and on terms less favorable than those obtainable through a public sale (including, without limitation, a public offering made pursuant to a registration statement under the Securities Act of 1933, as amended), and the Pledgor agrees that the Collateral Agent has no

obligation to engage in public sales and no obligation to delay sale of any Pledged Collateral to permit the issuer thereof to register the Pledged Collateral for a form of public sale requiring registration under the Securities Act of 1933, as amended. If the Collateral Agent determines to exercise its right to sell any or all of the Pledged Collateral, upon written request the Pledgor shall, from time to time, furnish to the Collateral Agent all such information as is necessary in order to determine the number of shares and other instruments included in the Pledged Collateral which may be sold by the Collateral Agent as exempt transactions under the Securities Act of 1933, as amended, and rules of the Securities Exchange Commission thereunder, as the same are from time to time in effect.

5.3 Purchase of Pledged Collateral. The Collateral Agent may be a purchaser of the Pledged Collateral or any part thereof or any right or interest therein at any sale thereof, whether pursuant to foreclosure, power of sale or otherwise hereunder and the Collateral Agent may apply the purchase price to the payment of the Secured Obligations. Any purchaser of all or any part of the Pledged Collateral shall, upon any such purchase, acquire good title to the Pledged Collateral so purchased, free of the security interests created by this Agreement.

5.4 Application of Proceeds. The Collateral Agent shall apply any proceeds from time to time held by it and the net proceeds of any collection, recovery, receipt, appropriation, realization or sale with respect to the Pledged Collateral in accordance with Section 7.02 of the Credit Agreement. For the avoidance of doubt, notwithstanding any other provision of any Loan Document to the contrary, no payment received from the Pledgor, if the Pledgor is not a Qualified ECP Guarantor (as defined in the Pledge and Security Agreement), shall be applied by the Administrative Agent or any other Secured Party to the payment of any Excluded Swap Obligations.

SECTION 6. MISCELLANEOUS PROVISIONS

6.1 Notices. Unless otherwise specifically herein provided, all notices required or permitted under the terms and provisions hereof shall be in writing and any such notice shall become effective if given in accordance with the provisions of Section 9.01 of the Credit Agreement (and, in the case of notices to the Pledgor, addressed to the Pledgor's address as set forth in Section 3.5).

6.2 Continuing Security Interest. This Agreement shall create a continuing security interest in the Pledged Collateral until the Termination Date.

6.3 Reinstatement. This Agreement shall continue to be effective or be reinstated, as the case may be, if at any time any amount received by the Collateral Agent or any other Secured Party hereunder or pursuant hereto is rescinded or must otherwise be restored or returned by the Collateral Agent or such Secured Party upon the occurrence of any proceeding, voluntary or involuntary, involving the bankruptcy, reorganization, insolvency, receivership, liquidation or other similar arrangement affecting the Pledgor, the Borrower or any Subsidiary of the Borrower or upon the appointment of any intervenor or conservator of, or trustee or similar official for, the Pledgor, the Borrower or any Subsidiary of the Borrower or any substantial part of the Pledgor's, the Borrower's or any Subsidiary of the Borrower's assets, or upon the entry of an order by any court avoiding the payment of such amount, or otherwise, all as though such payments had not been made.

6.4 Independent Security. The security provided for in this Agreement shall be in addition to and shall be independent of every other security which the Collateral Agent or the other Secured Parties may at any time hold for any of the Secured Obligations hereby secured, whether or not under the Security Documents. The execution of any other Security Document shall not modify or supersede the security interest or any rights or obligations contained in this Agreement and shall not in any way affect, impair or invalidate the effectiveness and validity of this Agreement or any term or condition hereof. The Pledgor hereby waives its right to plead or claim in any court that the execution of any other Security Document is a cause for extinguishing, invalidating, impairing or modifying the effectiveness and validity of this Agreement or any term or condition contained herein. The Collateral Agent shall be at liberty to accept further security from any third party and/or release such security without notifying the Pledgor and without affecting in any way the obligations of the Pledgor under this Agreement. The Collateral Agent shall determine if any security conferred upon the Secured Parties under the Security Documents shall be enforced by the Collateral Agent, as well as the sequence of securities to be so enforced.

6.5 Amendments. Subject to the last sentence of Section 8.02 of the Credit Agreement, no waiver, amendment, modification or termination of any provision of this Agreement, or consent to any departure by the Pledgor therefrom, shall in any event be effective without the prior written consent of the Pledgor and either (x) the Required Lenders or (y) the Collateral Agent (acting at the direction of the Required Lenders), and none of the Pledged Collateral shall be released without the written consent of the Collateral Agent. Any such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given.

6.6 Successors and Assigns. This Agreement shall be binding upon the Pledgor and its successors, transferees and assigns and shall inure to the benefit of the Collateral Agent and the other Secured Parties and their respective successors, transferees and assigns. The Pledgor shall not assign or otherwise transfer any of its rights or obligations under this Agreement without the written consent of the Collateral Agent (acting with the consent of the Required Lenders pursuant to the Credit Agreement), and any attempted assignment without such consent shall be null and void.

6.7 Collateral Agent. The Collateral Agent has been appointed to act as the collateral agent hereunder by the Secured Parties. The Collateral Agent shall be obligated, and shall have the right hereunder, to make demands, to give notices, to exercise or refrain from exercising any rights or remedies, and to take or refrain from taking any action (including, without limitation, the release or substitution of Pledged Collateral), solely in accordance with this Agreement, the Credit Agreement and the other Loan Documents. In furtherance of the foregoing provisions of this Section 6.7, each Secured Party, by its acceptance of the benefits hereof, agrees that it shall have no right individually to realize upon any of the Pledged Collateral hereunder, it being understood and agreed by such Secured Party that all rights and remedies hereunder may be exercised solely by the Collateral Agent for the benefit of the Secured Parties in accordance with the terms of this Section 6.7 The Collateral Agent may resign or be removed in accordance with Section 8.08 of the Credit Agreement. After the Collateral Agent's resignation or removal thereunder as the Collateral Agent, the provisions of this Agreement shall inure to its benefit as to any actions taken or omitted to be taken by it under this Agreement while it was the Collateral Agent hereunder. The powers conferred on the Collateral Agent hereunder are solely to protect the interests of the Secured Parties in the Collateral and shall not impose any duty upon the Collateral Agent or any other Secured Party to exercise any such powers. The Collateral Agent and the other Secured Parties shall be accountable only for amounts that they actually receive as a result of the exercise of such powers, and neither they nor any of their officers, directors, employees or agents shall be responsible to the Pledgor for any act or failure to act hereunder.

6.8 Survival. All agreements, statements, representations and warranties made by the Pledgor herein or in any certificate or other instrument delivered by the Pledgor or on its behalf under this Agreement shall be considered to have been relied upon by the Collateral Agent and the other Secured Parties and shall survive the execution and delivery of this Agreement until the Termination Date regardless of any investigation made by the Collateral Agent or the other Secured Parties or made on their behalf.

6.9 Transfer of Loans. Without limiting the generality of Section 6.2, but subject to the terms of the Credit Agreement and any other Loan Document, any Lender may assign or otherwise transfer any Loans held by it to any other Person, and such other Person shall thereupon become vested with all the benefits in respect thereof granted to the Lenders herein or otherwise. Upon the Termination Date, the security interest granted hereby shall terminate hereunder and of record and all rights to the Pledged Collateral shall revert to the Pledgor. Upon any such termination, the Collateral Agent shall, at the Pledgor's expense, execute and deliver to the Pledgor (without recourse and without any representation or warranty) such documents as the Pledgor shall reasonably request to evidence such termination and shall use commercially reasonable efforts to return to the Pledgor (without recourse and without any representation or warranty) any Pledged Collateral previously delivered to the Collateral Agent (or to the extent necessary, execute a lost affidavit in form and substance reasonably satisfactory to the Pledgor).

6.10 No Waiver; Remedies Cumulative. No failure or delay on the part of the Collateral Agent in exercising any right, power or privilege hereunder and no course of dealing between any of the parties hereto shall operate as a waiver thereof; nor shall any single or partial exercise of any right, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, power or privilege hereunder or thereunder. The rights and remedies herein expressly provided are cumulative and not exclusive of any rights or remedies which the Collateral Agent would otherwise have.

6.11 Counterparts. This Agreement may be executed in counterparts (and by different parties hereto on different counterparts), each of which shall be deemed an original but all of which when taken together shall constitute a single contract. Delivery of an executed signature page to this Agreement by facsimile transmission, "pdf" or similar electronic copy shall be as effective as delivery of a manually signed counterpart of this Agreement. Any party hereto may request an original counterpart of any party delivering such electronic counterpart. A set of the copies of this Agreement signed by all the parties shall be lodged with the Borrower and the Administrative Agent.

6.12 Headings Descriptive. The headings of the several sections and subsections of this Agreement are inserted for convenience only and shall not in any way affect the meaning or construction of any provision of this Agreement.

6.13 Severability. In case any provision contained in or obligation under this Agreement shall be invalid, illegal or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations, or of such provision or obligation in any other jurisdiction, shall not in any way be affected or impaired thereby.

6.14 Governing Law. **THIS AGREEMENT SHALL BE CONSTRUED IN ACCORDANCE WITH, AND GOVERNED BY, THE LAWS OF THE STATE OF NEW YORK (WITHOUT REGARD TO CONFLICT OF LAWS PROVISIONS THAT WOULD RESULT IN THE APPLICATION OF LAWS OTHER THAN THE LAWS OF THE STATE OF NEW YORK (OTHER THAN ANY MANDATORY PROVISIONS OF THE UCC RELATING TO THE LAW GOVERNING PERFECTION AND THE EFFECT OF PERFECTION OF THE SECURITY INTERESTS GRANTED THEREUNDER)).**

6.15 Consent to Jurisdiction.

(a) The Pledgor hereby irrevocably and unconditionally submits, for itself and its property, to the exclusive jurisdiction of any New York State court or Federal court of the United States of America sitting in New York City, Borough of Manhattan, and any appellate court from any thereof, in any action or proceeding arising out of or relating to this Agreement, or for recognition or enforcement of any judgment, and the Pledgor hereby irrevocably and unconditionally agrees that all claims in respect of any such action or proceeding shall be heard and determined in such New York State court or, to the extent permitted by law, in such Federal court. The Pledgor agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Nothing in this Agreement, however, shall affect any right that any Secured Party may otherwise have to bring any action or proceeding relating to this Agreement against the Pledgor or its properties in the courts of any jurisdiction.

(b) The Pledgor hereby irrevocably and unconditionally waives, to the fullest extent it may legally and effectively do so, any objection which it may now or hereafter have to the laying of venue of any action or proceeding arising out of or relating to this Agreement, or for recognition or enforcement of any judgment, in any New York State court or Federal court of the United States of America sitting in New York City. The Pledgor hereby irrevocably and unconditionally waives, to the fullest extent permitted by law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court.

(c) The Pledgor irrevocably consents to service of process in the manner provided for notices in Section 6.1. Nothing in this Agreement will affect the right of any party to this Agreement to serve process in any other manner permitted by law.

(d) The Pledgor shall maintain an agent to receive service of process in New York, New York at all times until the Termination Date.

6.16 Waiver of Jury Trial. EACH PARTY HERETO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT. EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT, THE SECURED PARTIES AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 6.16.

6.17 Entire Agreement. This Agreement, together with any other agreement executed in connection herewith (including the Credit Agreement and the other Loan Documents), is intended by the parties as a final expression of their agreement as to the matters covered hereby and is intended as a complete and exclusive statement of the terms and conditions thereof. Accordingly, this Agreement may not be contradicted by evidence of prior, contemporaneous or subsequent oral agreements of the parties. There are no unwritten or oral agreements between the parties.

6.18 Independent Obligations. The Pledgor's obligations under this Agreement are independent of those of the Borrower. Subject to Section 2.1(c), the Collateral Agent may bring a separate action against the Pledgor without first proceeding against the Borrower or any other Person or any other security held by the Collateral Agent and without pursuing any other remedy.

6.19 Waiver of Defenses.

(a) Subject to Section 2.1(c), to the maximum extent permitted by applicable law, the Pledgor hereby waives: (i) any defense of a statute of limitations; (ii) any defense based on the legal disability of any Person or any discharge or limitation of the liability of any Person to the Collateral Agent or the Secured Parties, whether consensual or arising by operation of law; (iii) presentment, demand, protest and notice of any kind (other than as expressly provided by the Loan Documents); and (iv) any defense based upon or arising out of any defense which any Person may have to the payment or performance of any part of the Secured Obligations (other than the defense of payment).

(b) Subject to Section 2.1(c), the Pledgor hereby waives, to the maximum extent permitted by applicable law, (i) all rights under any law to require the Collateral Agent to pursue the Borrower or any other Person (including the Pledgor under any other obligation of the Pledgor), any security which the Collateral Agent may hold, or any other remedy before proceeding against the Pledgor; (ii) all rights of reimbursement or subrogation, all rights to enforce any remedy that the Collateral Agent or the Secured Parties may have against any Person, and all rights to participate

in any security held by the Collateral Agent, in each case until the Termination Date; (iii) all rights to require the Collateral Agent to give any notices of any kind, including, without limitation, notices of acceptance, nonpayment, nonperformance, protest, dishonor, default, delinquency or acceleration, or to make any presentments, demands or protests, except as set forth herein or expressly provided in the Credit Agreement or any of the Loan Documents; (iv) all rights to assert the bankruptcy or insolvency of any Person as a defense hereunder or as the basis for rescission hereof; (v) all rights under any law purporting to reduce the Pledgor's obligations hereunder if the Secured Obligations are reduced other than as a result of payment in Cash of such Secured Obligations including, without limitation, any reduction based upon any Secured Party's error or omission in the administration of the Secured Obligations; (vi) all defenses based on the incapacity, disability or lack of authority of the Borrower or any other Person, the repudiation of the Loan Documents or the Specified Cash Management Agreements by the Borrower or any Person, the failure by the Collateral Agent or the Secured Parties to enforce any claim against any Person, or the unenforceability in whole or in part of any Loan Documents or the Specified Cash Management Agreements; (vii) all suretyship and guarantor's defenses generally including, without limitation, defenses based upon collateral impairment or any statute or rule of law providing that the obligation of a surety or guarantor must not exceed or be more burdensome than that of the principal; (viii) all rights to insist upon, plead or in any manner whatever claim or take the benefit or advantage of, any appraisal, valuation, stay, extension, marshaling of assets, redemption or similar law, or exemption, whether now or at any time hereafter in force, which may delay, prevent or otherwise affect the performance by the Pledgor of its obligations under, or the enforcement by the Collateral Agent of, this Agreement; (ix) any requirement on the part of the Collateral Agent or the holder of any obligations under the Loan Documents or the Specified Cash Management Agreements to mitigate the damages resulting from any default; and (x) except as otherwise specifically set forth herein or as required by applicable law, all rights of notice and hearing of any kind prior to the exercise of rights by the Collateral Agent upon the occurrence and during the continuation of an Event of Default to repossess with judicial process or to replevy, attach or levy upon the Pledged Collateral. To the extent permitted by law, the Pledgor waives the posting of any bond otherwise required of the Collateral Agent in connection with any judicial process or proceeding to obtain possession of, replevy, attach, or levy upon the Pledged Collateral, to enforce any judgment or other security for the Secured Obligations, to enforce any judgment or other court order entered in favor of the Collateral Agent, or to enforce by specific performance, temporary restraining order, preliminary or permanent injunction, this Agreement or any other agreement or document between the Pledgor, the Collateral Agent and the Secured Parties. The Pledgor further agrees that upon the occurrence and during the continuation of an Event of Default, the Collateral Agent may elect to nonjudicially or judicially foreclose against any real or personal property security it holds for the Secured Obligations or any part thereof, or to exercise any other remedy against any Person, any security or any guarantor, even if the effect of that action is to deprive the Pledgor of the right to

collect reimbursement from any Person for any sums paid by the Pledgor to the Collateral Agent or any Secured Party.

(c) If the Collateral Agent may, under applicable law, proceed to realize its benefits under any of the Loan Documents giving the Collateral Agent a Lien upon any Collateral, whether owned by the Borrower or by any other Person, either by judicial foreclosure or by non-judicial sale or enforcement, the Collateral Agent may, at its sole option, determine which of its remedies or rights it may pursue without affecting any of the rights and remedies of the Collateral Agent under this Agreement. If, in the exercise of any of such rights and remedies, the Collateral Agent shall forfeit any of its rights or remedies, including any right to enter a deficiency judgment against the Borrower or any other Person, whether because of any applicable laws pertaining to "election of remedies" or the like, to the extent permitted by applicable law, the Pledgor hereby consents to such action by the Collateral Agent and waives any claim based upon such action, even if such action by the Collateral Agent shall result in a full or partial loss of any rights of subrogation, indemnification or reimbursement which the Pledgor might otherwise have had but for such action by the Collateral Agent or the terms herein. Any election of remedies which results in the denial or impairment of the right of the Collateral Agent to seek a deficiency judgment against any of the parties to any of the Loan Documents shall not, to the extent permitted by applicable law, impair the Pledgor's obligation hereunder. In the event the Collateral Agent shall bid at any foreclosure or trustee's sale or at any private sale permitted by law or the Loan Documents, the Collateral Agent may bid all or less than the amount of the Secured Obligations.

(d) To the extent permitted by applicable law, the Pledgor shall not assert and hereby waives any claim against any Indemnitee, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement, the Credit Agreement or any agreement or instrument contemplated hereby or thereby, the Transactions, any Loan or Letter of Credit or the use of the proceeds thereof.

6.20 Subrogation, Etc. Notwithstanding any payment or payments made by the Pledgor or the exercise by the Collateral Agent of any of the remedies provided under this Agreement or any other Loan Document, until the Secured Obligations have been paid in full, the Pledgor shall have no claim (as defined in 11 U.S.C. § 101(5)) of subrogation to any of the rights of the Collateral Agent against any Person, the Pledged Collateral or any guaranty held by the Collateral Agent for the satisfaction of any of the Secured Obligations, nor shall the Pledgor have any claims (as defined in 11 U.S.C. § 101(5)) for reimbursement, indemnity, exoneration or contribution from any such Person in respect of payments made by the Pledgor hereunder. Notwithstanding the foregoing, if any amount shall be paid to the Pledgor on account of such subrogation, reimbursement, indemnity, exoneration or contribution rights at any time before the Secured Obligations have been paid in full, such amount shall be held by the Pledgor in trust for the Collateral Agent segregated from other funds of the Pledgor, and shall be turned over to the Collateral Agent in the exact form received by the Pledgor (duly endorsed by the Pledgor to the Collateral Agent if required) to be applied against the Secured Obligations in such amounts and in such order as the Collateral Agent may elect, or as directed by the Administrative Agent.

6.21 Collateral Agent. The rights, powers, benefits, privileges, immunities and indemnities given to the Collateral Agent and set forth in the Credit Agreement are expressly incorporated herein by reference thereto and, subject to Section 6.22, shall survive the termination of this Agreement and the resignation or removal of the Collateral Agent.

6.22 Regulatory Matters. Notwithstanding anything to the contrary set forth in this Agreement or any other Loan Document, the Collateral Agent, on behalf of the Secured Parties, acknowledges and agrees that its rights, remedies and powers under this Agreement (including its exercise of remedial rights upon collateral and voting of equity interests in (or otherwise taking control of) Persons licensed by the Gaming Authorities and/or under Gaming Laws), may be exercised only to the extent that (i) the exercise thereof does not violate any applicable laws, rules and regulations of the Gaming Authorities, including Gaming Laws, and (ii) all necessary approvals, licenses and consents from the Gaming Authorities required in connection therewith are obtained. Notwithstanding any other provision of this Agreement, the Pledgor expressly authorizes the Collateral Agent and the other Secured Parties to cooperate with the applicable Gaming Authorities in connection with the administration of their regulatory jurisdiction over the Pledgor and the Borrower, including, without limitation, to the extent not inconsistent with the internal policies of such Collateral Agent or Secured Party and any applicable legal or regulatory restrictions, the provision of such documents or other information as may be requested by any such Gaming Authorities relating to the Collateral Agent, the Pledgor or the Borrower, or the Loan Documents. The parties acknowledge that the provisions of this Section 6.22 shall not be for the benefit of the Pledgor, the Borrower or any other Person.

6.23 Intercreditor Agreement. All rights and remedies of the Collateral Agent hereunder are, as between the Administrative Agents (as defined in the Intercreditor Agreement) and the Collateral Agents (as defined in the Intercreditor Agreement), subject to the terms of the Intercreditor Agreement. This provision is for the benefit of, and may be enforced exclusively by, the Administrative Agents and the Collateral Agents only. For the avoidance of doubt, this, provision is not for the benefit of the Pledgor and may not, under any circumstances, be enforced by the Pledgor.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and delivered by their officers thereunto duly authorized as of the date first above written.

MONTREIGN HOLDING COMPANY, LLC,
a New York limited liability company

By: /s/ Joseph A. D'Amato
Name: Joseph A. D'Amato
Title: President

FIFTH THIRD BANK,
as Collateral Agent

By: /s/ Knight D. Kieffer
Name: Knight D. Kieffer
Title: Vice President

ACKNOWLEDGED AND AGREED:

MONTREIGN OPERATING COMPANY, LLC,
a New York limited liability company

By: /s/ Joseph A. D'Amato
Name: Joseph A. D'Amato
Title: President

EXHIBIT 10.57

LOAN AGREEMENT

Dated as of January 24, 2017

between

MONTREIGN HOLDING COMPANY, LLC,
as Borrower,

and

KIEN HUAT REALTY III LIMITED,
as Lender

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THIS LOAN AGREEMENT (this "Agreement"), made as of January 24, 2017, between MONTREIGN HOLDING COMPANY, LLC, a New York limited liability company, as borrower ("Borrower"), and KIEN HUAT REALTY III LIMITED, a corporation organized in the Isle of Man, as lender (together with its successors and assigns, "Lender"). Lender and Borrower are hereinafter referred to collectively as the "Parties" or individually as a "Party".

RECITALS

WHEREAS, Borrower desires to obtain from Lender the Loan (as hereinafter defined), the proceeds of which will be used exclusively as a capital contribution to Montreign Operating Company, LLC ("Operator") for purposes of cost of construction and operation of the property known as Montreign Resort Casino to be located in Sullivan County, New York; and

WHEREAS, Lender is willing to make the Loan on the terms and subject only to the conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the agreements, provisions and covenants contained herein, and for other good and valuable consideration, the sufficiency of which is hereby acknowledged, Lender and Borrower agree as follows:

Article I

DEFINITIONS

SECTION 1.01. Definitions. When used herein, the following capitalized terms shall have the following meanings:

"Affiliate" with respect to any Person means any Person directly or indirectly controlling, controlled by or under common control with, such Person. For the purposes of this Agreement, "control" (including, with correlative meaning, the terms "controlling" and "controlled") shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities, by contract or otherwise.

"Agreement" has the meaning specified in the preamble.

"Bankruptcy Code" has the meaning specified in Section 7.01(d).

"Borrower" has the meaning specified in the preamble.

"Business Day" means any day other than (i) a Saturday, (ii) a Sunday, (iii) a day on which federally insured depository institutions located in the State of New York are required or authorized by Law to close, or (iv) a day on which banking institutions located in Singapore or Malaysia are required or authorized by Law to close.

"Closing Date" shall mean the date hereof.

"Code" means the Internal Revenue Code of 1986, as amended, and applicable U.S. Department of Treasury regulations issued pursuant thereto in temporary or final form.

"Collateral" means the Pledged Collateral under (and as defined in) the Pledge Agreement.

"Commitment Fee" means a commitment fee equal to $320,000.00.

"Damages" to a Party means any and all liabilities, obligations, losses, demands, damages, penalties, assessments, actions, causes of action, judgments, proceedings, suits, claims, costs, expenses and disbursements of any kind or nature whatsoever (including reasonable attorneys' fees and other costs of defense and/or enforcement whether or not suit is brought), fines, charges, fees, settlement costs and disbursements imposed on, incurred by or asserted against such Party, whether based on any federal, state or foreign Laws, statutes, rules or regulations (including securities and commercial laws, statutes, rules or regulations and environmental Laws), on common law or equitable cause or on contract or otherwise.

"Default Rate" means, with respect to the Note, 5.00% per annum in excess of the Interest Rate.

"Dollars" or "$" means lawful money of the United States of America.

"Embargoed Person" has the meaning specified in Section 4.07.

"Empire" means Empire Resorts, Inc., a Delaware corporation.

"Event of Default" has the meaning specified in Section 7.01.

"Expense Amount" means for any year $9,000,000.00, less any cash available to pay corporate overhead expenses of Empire or, without duplication, any other cash distributed to Empire, in each case, from subsidiaries of Empire other than Operator and its subsidiaries.

"GAAP" means the generally accepted accounting principles in the United States of America in effect from time to time.

"Governmental Authority" means any nation or government, any state, county, regional, local or municipal government, any bureau, department, agency or other political subdivision thereof, including, without limitation, the New York State Gaming Commission, and any entity exercising executive, legislative, judicial, regulatory or administrative functions of, or pertaining to, government (including any court).

"Governmental Authorization" means any permit, license, authorization, plan, directive, consent order or consent decree of or from any Governmental Authority.

"Indebtedness" means the Principal Indebtedness, together with interest and all other obligations and liabilities of Borrower under the Loan Documents, including all transaction costs and other amounts due or to become due to Lender pursuant to this Agreement, the Note or in accordance with any of the other Loan Documents, and all other amounts, sums and expenses reimbursable by Borrower to Lender hereunder, pursuant to the Note or any other Loan Document.

"Indemnified Parties" has the meaning specified in Section 8.18.

"Interest Accrual Period" means the period commencing on and including the first day of each calendar month during the Term of the Loan and ending on and including the last day of such calendar month. Notwithstanding the foregoing, the first Interest Accrual Period shall commence on and include the Closing Date.

"Interest Payment Date" means the first Business Day of each calendar month beginning on February 1, 2017.

"Interest Rate" means 12.00% per annum.

"Law" means any federal, state, local or foreign law, including common law, and any regulation, rule, requirement, policy, judgment, order, writ, decree, ruling, award, approval, authorization, consent, license, waiver, variance, guideline or permit of, or any agreement with, any Governmental Authority.

"Lender" has the meaning specified in the preamble.

"Lending Parties" has the meaning specified in Section 8.22.

"Loan" has the meaning specified in Section 2.01.

"Loan Amount" means $32,320,000.00.

"Loan Documents" means, collectively, this Agreement, the Note, the Pledge Agreement and any and all other documents and agreements executed in connection with the Indebtedness, as each such agreement may be modified, supplemented, consolidated, extended or reinstated from time to time.

"Material Adverse Effect" means a material adverse effect on and/or material adverse development with respect to (i) the business, results of operations, properties, assets or condition (financial or otherwise) of Borrower, (ii) the ability of Borrower to perform, or of Lender to enforce, any material provision of any Loan Document; or (iii) the legality, validity, binding effect, or enforceability of any material provision of any Loan Document.

"Maturity Date" means 1 year from the maturity of the Senior Loan, as the same may be extended in accordance with this Agreement, or such earlier date as may result from acceleration of the Loan in accordance with this Agreement.

"Note" means that certain promissory note, dated as of the Closing Date, made by Borrower to the order of Lender to evidence the Loan, as such note may be modified and/or replaced from time to time in accordance herewith.

"Notices" has the meaning specified in Section 8.04.

"Operator" has the meaning specified in the recitals.

"Party" or "Parties" has the meaning specified in the preamble.

"PATRIOT Act" means the Uniting and Strengthening America by Providing Appropriate Tools Required To Intercept and Obstruct Terrorism Act (Title III of Pub. L. 107-56 (signed into Law on October 26, 2001)), as amended from time to time.

"Person" means an individual, corporation, association, limited liability company, limited liability partnership, partnership, estate, trust, unincorporated organization or a government or any agency or political subdivision thereof.

"Pledge Agreement" means that certain Pledge and Security Agreement, dated as of the date hereof, executed by Empire in favor of Lender, as the same may from time to time be amended, restated, replaced, supplemented or otherwise modified in accordance herewith.

"Principal Indebtedness" means the principal balance of the Loan outstanding from time to time.

"Senior Loan" means the term loan made pursuant to the terms of the Senior Loan Agreement.

"Senior Loan Agreement" means that certain Building Term Loan Agreement, dated as of the date hereof, by and among Operator, as borrower, the lenders party thereto, as lenders, and Credit Suisse AG, Cayman Islands Branch, as administrative agent.

"Taxes" means, collectively, all taxes, levies, duties, imposts, deductions, charges, fees or withholdings, and all interest, penalties and other liabilities imposed by a Governmental Authority or taxing authority in any jurisdiction.

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

"U.S. Person" means a United States person within the meaning of Section 7701(a)(30) of the Code.

"U.S. Tax" means any present or future tax, assessment or other charge or levy imposed by or on behalf of the U.S. or any taxing authority thereof.

SECTION 1.02. General Construction. Defined terms used in this Agreement may be used interchangeably in singular or plural form, and pronouns are to be construed to cover all genders. All references to this Agreement or any agreement or instrument referred to in this Agreement shall mean such agreement or instrument as originally executed and as hereafter amended, supplemented, extended, consolidated or restated from time to time. The words "herein," "hereof" and "hereunder" and other words of similar import refer to this Agreement as a whole and not to any particular subdivision; and the words "Article" and "section" refer to the entire article or section, as applicable and not to any particular subsection or other subdivision. Reference to days for performance means calendar days unless Business Days are expressly indicated. All references to sections, schedules and exhibits are to sections, schedules and exhibits in or to this Agreement unless otherwise specified. Unless otherwise specified: (i) "including" means "including, but not limited to". All accounting terms not specifically defined in this Agreement shall be construed in accordance with GAAP, as the same may be modified in this Agreement.

ARTICLE II

GENERAL TERMS

SECTION 2.01. The Loan.

(a) On the Closing Date, subject to the terms and conditions set forth herein, Lender shall make a loan to Borrower (the "Loan") in an amount equal to the Loan Amount. The Loan shall be represented by a single Note that shall bear interest as described in this Agreement at a per annum rate equal to the Interest Rate.

The Loan is not in the nature of a revolving credit facility, and any amount borrowed and repaid may not be re-borrowed.

(b) The Loan shall be secured by the Collateral pursuant to the Pledge Agreement.

SECTION 2.02. The Term.

(a) The term of the Loan (the "Term") shall terminate and expire on the Maturity Date (as the same may be extended pursuant to subsection (b) below).

(b) Lender shall have the right, in its sole discretion, to extend the Maturity Date for such periods as it elects, up to a period not to exceed 1 year, upon 10 days' written notice to Borrower.

SECTION 2.03. Interest and Principal; Commitment Fee.

(a) On each Interest Payment Date, Borrower shall pay to Lender interest accrued on the Loan, in arrears, for the immediately preceding Interest Accrual Period at a rate per annum equal to the Interest Rate (except that interest shall be payable on the Principal Indebtedness, including due but unpaid interest, at the Default Rate with respect to any portion of such Interest Accrual Period falling during the continuance of an Event of Default). Interest payable hereunder shall compound monthly and shall be computed on the basis of a 360-day year and the actual number of days elapsed.

(b) Cash interest on the Loan shall not be required to be paid prior to the Maturity Date. Prior to the Maturity Date, interest on the Principal Indebtedness shall accrue at the Interest Rate and shall be added to the Principal Indebtedness on each Interest Payment Date, and amounts so added shall thereafter be deemed to be a part of the Principal Indebtedness for all purposes hereof, including for purposes of Section 7.02(a), and shall be due and payable in cash, together with interest through the end of the applicable Interest Accrual Period and all other amounts then due under the Loan Documents, on the Maturity Date.

(c) On the Closing Date, as a condition precedent to the effectiveness of this Agreement, Borrower shall pay to Lender the Commitment Fee.

(d) Partial or full prepayment of the Loan shall be permitted at any time without premium or penalty.

(e) Prior to repayment of the Principal Indebtedness of the Loan in full, Borrower shall not make or pay any dividends or distributions to Empire, except for (i) dividends or distributions made to Empire in an amount not to exceed, in any year, the Expense Amount and (ii) any dividends, distributions or other payments expressly permitted by Section 6.05(b) of the Senior Loan Agreement. For avoidance

of doubt, partial or full prepayment of the Loan shall be permitted at any time without payment of any premium, fee or penalty.

(f) Notwithstanding anything to the contrary herein, on the last day of each "accrual period" (as determined under Section 1272(a)(5) of the Code) that occurs after the fifth anniversary of the Closing Date with respect to the Loan, Borrower shall pay in cash to Lender the aggregate amount by which (x) the sum of (i) the aggregate interest required to be accrued and added to the Principal Indebtedness under Section 2.03(b), and (ii) any other original issue discount (as determined under Section 163(i) of the Code) that has accrued on the Loan from the Closing Date through the end of such accrual period, in each case, that has not been paid in cash, exceeds (y) the product of the "issue price" (as defined for purposes of the Code) of the Loan and the "yield to maturity" (as defined for purposes of the Code) of the Loan.

SECTION 2.04. Method and Place of Payment. Except as otherwise specifically provided in this Agreement, all payments and prepayments under this Agreement and the Note shall be made to Lender not later than 11:00 a.m., New York City time, on the date when due and shall be made in lawful money of the United States of America by wire transfer in federal or other immediately available funds to the account specified from time to time by Lender. Any funds received by Lender after such time shall be deemed to have been paid on the next succeeding Business Day. Lender shall notify Borrower in writing of any changes in the account to which payments are to be made. If the amount received from Borrower pursuant to this Agreement is less than the sum of all amounts then due and payable hereunder, such amount shall be applied, at Lender's sole discretion, toward the components of the Indebtedness (e.g., interest, principal and other amounts payable hereunder) in such sequence as Lender shall elect in its sole discretion.

SECTION 2.05. Increased Costs.

(a) If Lender determines, in its sole discretion, at any time that any Law or treaty or any change therein or in the interpretation or application thereof shall (i) impose, modify or deem applicable any reserve, special deposit or similar requirement against assets of, deposits with or for the account of, or credit extended by, Lender or (ii) impose on Lender any other condition affecting this Agreement, and the result of any of the foregoing shall be to increase the cost to Lender of making or maintaining the Loan, or to reduce the amount of any sum received or receivable by Lender (whether principal, interest or otherwise), then Borrower will pay to Lender such additional amount or amounts as will compensate Lender for such additional costs incurred or reduction suffered.

(b) If Lender determines, in its sole discretion, at any time that any Law or treaty or any change therein or in the interpretation or application thereof regarding capital requirements has or would have the effect of reducing the rate of return on Lender's capital or on the capital of Lender's holding company, if any, as a

consequence of this Agreement or the Loan made by Lender to a level below that which Lender or Lender's holding company, if any could have achieved but for such change (taking into consideration Lender's policies and the policies of Lender's holding company, if any with respect to capital adequacy), then from time to time, Borrower will pay to Lender such additional amount or amounts as will compensate Lender or Lender's holding company, if any, for any such reduction suffered.

(c) A certificate of Lender setting forth the amount(s) necessary to compensate Lender or its holding company, if any, as specified in Section 2.05(b) shall be delivered to Borrower and shall be conclusive absent manifest error. Borrower shall pay to Lender the amount shown as due on any such certificate within ten (10) days after receipt thereof.

(d) Failure or delay on the part of Lender to demand compensation pursuant to this Section 2.05 shall not constitute a waiver of Lender's right to demand such compensation.

(a) Lender hereby represents and warrants that, as of the Closing Date, to its actual knowledge, there is no Law or treaty that would require Borrower to pay to Lender any additional amounts pursuant to this Section 2.05.

SECTION 2.06. Application of Payments; Offset. Subject to Section 7.04, all payments or prepayments of the Loan made by Borrower shall be applied to pay: *first*, any costs, expenses and other amounts not constituting principal or interest which are then due Lender hereunder; *second*, any accrued and unpaid interest then payable with respect to the Loan; and *third*, the Principal Indebtedness of the Loan.

SECTION 2.07. Taxes.

(a) Within 30 days after paying any amount from which it is required by Law to make any deduction or withholding, and within 30 days after it is required by Law to remit such deduction or withholding to any relevant taxing or other Governmental Authority, Borrower shall deliver to Lender satisfactory evidence of such deduction, withholding or payment (as the case may be). For the avoidance of doubt, Borrower shall not be required to pay to Lender any additional amounts under Section 2.05 due to any deduction or withholding for U.S. Tax resulting from any U.S. law in effect on the date hereof.

(b) Borrower shall promptly furnish to Lender any such other information as Lender may from time to time reasonably request in connection with the transactions contemplated in this Agreement in order for Lender to comply with its U.S. Tax computational and reporting obligations.

ARTICLE III

[INTENTIONALLY OMITTED]

ARTICLE IV

REPRESENTATIONS AND WARRANTIES

Borrower represents to Lender that, as of the Closing Date:

SECTION 4.01. Organization. Borrower is duly organized, validly existing and in good standing under the laws of the State of New York, and is in good standing in each other jurisdiction where ownership of its properties or the conduct of its business requires it to be so, and Borrower has all power and authority under such laws and its organizational documents and all material governmental licenses, authorizations, consents and approvals required to carry on its business as now conducted.

SECTION 4.02. Authorization. Borrower has the power and authority to enter into this Agreement and the other Loan Documents, to perform its obligations hereunder and thereunder and to consummate the transactions contemplated by the Loan Documents and has by proper action duly authorized the execution and delivery of the Loan Documents.

SECTION 4.03. No Conflicts. Neither the execution and delivery of the Loan Documents, nor the consummation of the transactions contemplated therein (which for all purposes herein shall include conversion of the Note), nor performance of and compliance with the terms and provisions thereof will (i) violate or conflict with any provision of Borrower's formation and governance documents, (ii) violate or conflict with contractual provisions of, or cause an event of default under, any indenture, loan agreement, mortgage, contract or other material agreement to which Borrower is a party or by which Borrower may be bound or (iii) result in or require the creation of any Lien or other charge or encumbrance upon any asset of Borrower.

SECTION 4.04. Enforceable Obligations. This Agreement and the other Loan Documents have been duly executed and delivered by Borrower and constitute Borrower's legal, valid and binding obligations, enforceable against Borrower in accordance with their respective terms, subject to bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and similar Laws of general applicability relating to or affecting creditors' rights and to general equity principles. The Loan Documents are not subject to any right of rescission, set-off, counterclaim or defense by Borrower, including the defense of usury.

SECTION 4.05. Compliance with Anti-Terrorism, Embargo, Sanctions and Anti-Money Laundering Laws. (a) None of the funds or other assets of any of Borrower constitute property of, or are beneficially owned, directly or indirectly, by any person, entity or government subject to trade restrictions under federal Law, including the International Emergency Economic Powers Act, 50 U.S.C. §§ 1701 et seq., The Trading with the Enemy Act, 50 U.S.C. App. 1 et seq., and any executive orders or regulations promulgated thereunder, with the result that (i) the investment in

Borrower (whether directly or indirectly), is prohibited by Law or (ii) the Loan is in violation of Law (any such person, entity or government, an "Embargoed Person"); (b) no Embargoed Person has any interest of any nature whatsoever in Borrower (whether directly or indirectly), with the result that (i) the investment in Borrower (whether directly or indirectly) is prohibited by Law or (ii) the Loan is in violation of Law, (c) none of the funds of Borrower have been derived from any unlawful activity with the result that (i) the investment in Borrower (whether directly or indirectly) is prohibited by Law or (ii) the Loan is in violation of Law and (d) Borrower and its subsidiaries are in material compliance with the PATRIOT Act. Borrower has implemented procedures, and will consistently apply those procedures throughout the term of the Loan, to ensure the foregoing representations and warranties remain true and correct during the term of the Loan. Notwithstanding Section 4.06 to the contrary, the representations and warranties contained in this Section 4.05 shall survive in perpetuity.

SECTION 4.06. Survival. Borrower agrees that all of the representations of Borrower set forth in this Agreement and in the other Loan Documents shall survive for so long as any portion of the Indebtedness is outstanding. All representations, covenants and agreements made by Borrower in this Agreement or in the other Loan Documents shall be deemed to have been relied upon by Lender notwithstanding any investigation heretofore or hereafter made by Lender or on its behalf.

ARTICLE V

AFFIRMATIVE COVENANTS

SECTION 5.01. Maintenance of Existence. Borrower shall, at all times (i) preserve, renew and maintain in full force and effect its legal existence and good standing under the Laws of the jurisdiction of its organization and (ii) take all reasonable action to maintain all rights, privileges, permits, licenses and franchises (including all Governmental Authorizations) necessary in the normal conduct of its business.

SECTION 5.02. Compliance with Laws. Borrower shall comply with all applicable Laws.

SECTION 5.03. Use of Proceeds. The proceeds received by Borrower in connection with the Loan shall be used by Borrower exclusively as a capital contribution to Operator for purposes of cost of construction and operation of (i) the property known as Montreign Resort Casino, (ii) the property known as Monster Golf Course, and (iii) the property known as Entertainment Village, each to be located in Sullivan County, New York, and for no other purpose.

ARTICLE VI

[INTENTIONALLY OMITTED]

ARTICLE VII

EVENTS OF DEFAULT

SECTION 7.01. Event of Default. The occurrence of any one or more of the following events shall be, and shall constitute the commencement of, an "Event of Default" hereunder (any Event of Default that has occurred shall continue unless and until waived by Lender in writing in its sole discretion) and Lender shall be entitled to the remedies set forth in Section 7.02:

(a) Payment.

(i) Borrower shall default in the payment when due of any principal or interest owing hereunder or under the Note (including any mandatory prepayment required hereunder); or

(ii) Borrower shall default, and such default shall continue for at least 5 Business Days after written notice to Borrower that such amounts are owing, in the payment when due of fees, expenses or other amounts owing hereunder, under the Note or under any of the other Loan Documents (other than principal and interest owing hereunder or under the Note).

(b) Other Loan Documents. Any Loan Document shall fail to be in full force and effect or to convey the material rights, powers and privileges purported to be created thereby; or a default shall occur under any of the other Loan Documents, in each case, beyond the expiration of any applicable cure period, which default shall have a Material Adverse Effect.

(c) Bankruptcy, Etc.

(i) Borrower or Operator shall commence a voluntary case concerning itself under Title 11 of the United States Code (as amended, modified, succeeded or replaced, from time to time, the "Bankruptcy Code");

(ii) Borrower or Operator shall commence any other proceeding under any reorganization, arrangement, adjustment of debt, relief of creditors, dissolution, insolvency or similar Law of any jurisdiction whether now or hereafter in effect relating to Borrower or Operator, or shall dissolve or otherwise cease to exist;

(iii) there is commenced against Borrower or Operator an involuntary case under the Bankruptcy Code, or any such other proceeding, which remains undismissed for a period of thirty (30) days after commencement;

(iv) Borrower or Operator is adjudicated insolvent or bankrupt;

(v) Borrower or Operator suffers appointment of any custodian or the like for it or for any substantial portion of its property and such appointment continues unchanged or unstayed for a period of thirty (30) days after commencement of such appointment;

(vi) Borrower or Operator makes a general assignment for the benefit of creditors; or;

(vii) any action is taken by Borrower or Operator for the purpose of effecting any of the foregoing.

(d) Other Covenants. A default shall occur in the due performance or observance by Borrower of any term, covenant or agreement (other than those referred to in any other subsection of this Section 7.1) contained in this Agreement or in any of the other Loan Documents, except that in the case of a default that can be cured by the payment of money, such default shall not constitute an Event of Default unless and until it shall remain uncured for 15 days after Borrower receives written notice thereof; and in the case of a default that cannot be cured by the payment of money but is susceptible of being cured within 30 days, such default shall not constitute an Event of Default unless and until it remains uncured for 30 days after Borrower receives written notice thereof, provided that within 5 days of its receipt of such written notice, Borrower delivers written notice to Lender of its intention and ability to effect such cure within such 30 day period; and if such non-monetary default is not cured within such 30 day period despite Borrower's diligent efforts but is susceptible of being cured within 60 days of Borrower's receipt of Lender's original notice, then Borrower shall have such additional time as is reasonably necessary to effect such cure, but in no event in excess of 60 days from Borrower's receipt of Lender's original notice, provided that prior to the expiration of the initial 30 day period, Borrower delivers written notice to Lender of its intention and ability to effect such cure prior to the expiration of such 60 day period.

(e) Cross Default.

(i) An event of default in payment of principal or interest (taking into account all applicable notice requirements and cure periods) shall occur under the Senior Loan Agreement; or

(ii) The Senior Loan shall be accelerated for any reason.

SECTION 7.02. Remedies.

(a) During the continuance of an Event of Default, Lender may by written notice to Borrower, in addition to any other rights or remedies available pursuant to this Agreement, the Note and the other Loan Documents, at Law or in equity, declare by written notice to Borrower all or any portion of the Indebtedness to be immediately due and payable, whereupon all or such portion of the

Indebtedness shall so become due and payable, and Lender may enforce or avail itself of any or all rights or remedies provided in the Loan Documents against Borrower (including all rights or remedies available at Law or in equity); provided, however, that, notwithstanding the foregoing, if an Event of Default specified in Section 7.01(d) shall occur, then the Indebtedness shall immediately become due and payable without the giving of any notice or other action by Lender. Any actions taken by Lender shall be cumulative and concurrent and may be pursued independently, singly, successively, together or otherwise, at such time and in such order as Lender may determine in its sole discretion, to the fullest extent permitted by Law, without impairing or otherwise affecting the other rights and remedies of Lender permitted by Law, equity or contract or as set forth in this Agreement or in the other Loan Documents.

(b) During the continuance of any Event of Default, Lender may, but without any obligation to do so and without notice to or demand on Borrower and without releasing Borrower from any obligation hereunder, take any action to cure such Event of Default. The costs and expenses incurred by Lender in exercising rights under this Section (including reasonable attorneys' fees), with interest at the Default Rate for the period after notice from Lender that such costs or expenses were incurred to the date of payment to Lender, shall constitute a portion of the Indebtedness and shall be due and payable to Lender upon demand therefor.

(c) Interest shall accrue on any judgment obtained by Lender in connection with its enforcement of the Loan at a rate of interest equal to the Default Rate.

SECTION 7.03. No Waiver. No delay or omission to exercise any remedy, right or power accruing upon an Event of Default shall impair any such remedy, right or power or shall be construed as a waiver thereof, but any such remedy, right or power may be exercised from time to time and as often as may be deemed by Lender to be expedient. A waiver of any Default or Event of Default shall not be construed to be a waiver of any subsequent Default or Event of Default or to impair any remedy, right or power consequent thereon.

SECTION 7.04. Application of Payments after an Event of Default. Notwithstanding anything to the contrary contained herein, during the continuance of an Event of Default, all amounts received by Lender in respect of the Loan shall be applied at Lender's sole discretion toward the components of the Indebtedness (e.g., Lender's expenses in enforcing the Loan, interest, principal and other amounts payable hereunder) and the Note in such sequence as Lender shall elect in its sole discretion; provided, that if an Event of Default specified in Section 7.01(a) shall occur, then Lender shall apply all amounts received by Lender in respect of the Loan towards the component of the Indebtedness for which Borrower's failure to pay has resulted in the occurrence of such Event of Default.

ARTICLE VIII
MISCELLANEOUS

SECTION 8.01. Successors. Except as otherwise provided in this Agreement, whenever in this Agreement any of the parties to this Agreement is referred to, such reference shall be deemed to include the successors and permitted assigns of such party. All covenants, promises and agreements in this Agreement contained, by or on behalf of Borrower, shall inure to the benefit of Lender and its successors and assigns.

SECTION 8.02. Governing Law.

(a) THIS AGREEMENT WAS NEGOTIATED IN THE STATE OF NEW YORK, THE NOTE WAS MADE BY BORROWER IN THE STATE OF NEW YORK, AND THE PROCEEDS OF THE LOAN SHALL BE DISBURSED FROM THE STATE OF NEW YORK, WHICH STATE THE PARTIES AGREE HAS A SUBSTANTIAL RELATIONSHIP TO THE PARTIES AND TO THE UNDERLYING TRANSACTIONS EMBODIED HEREBY, AND IN ALL RESPECTS, INCLUDING, WITHOUT LIMITING THE GENERALITY FOREGOING, MATTERS OF CONSTRUCTION, VALIDITY AND PERFORMANCE, THIS AGREEMENT, THE NOTE AND THE OTHER LOAN DOCUMENTS AND THE OBLIGATIONS ARISING THEREUNDER AND HEREUNDER SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK WITHOUT REGARD TO CHOICE OF LAW RULES TO THE EXTENT THE APPLICATION OF THE LAWS OF ANOTHER JURISDICTION WOULD BE REQUIRED THEREBY.

(b) ANY LEGAL SUIT, ACTION OR PROCEEDING AGAINST EITHER PARTY ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE NOTE OR ANY OF THE OTHER LOAN DOCUMENTS SHALL BE INSTITUTED IN ANY FEDERAL OR STATE COURT IN NEW YORK, NEW YORK. BORROWER HEREBY (i) IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY OBJECTION WHICH IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY SUCH SUIT, ACTION OR PROCEEDING BROUGHT IN SUCH A COURT AND ANY CLAIM THAT ANY SUCH PROCEEDING BROUGHT IN SUCH A COURT HAS BEEN BROUGHT IN AN INCONVENIENT FORUM, (ii) IRREVOCABLY SUBMITS TO THE JURISDICTION OF ANY SUCH COURT IN ANY SUCH SUIT, ACTION OR PROCEEDING AND (iii) IRREVOCABLY CONSENTS TO SERVICE OF PROCESS BY MAIL, PERSONAL SERVICE OR IN ANY OTHER MANNER PERMITTED BY APPLICABLE LAW, AT THE ADDRESS SPECIFIED IN SECTION 8.04 (AND AGREES THAT SUCH SERVICE AT SUCH ADDRESS IS SUFFICIENT TO CONFER PERSONAL JURISDICTION OVER ITSELF IN ANY SUCH SUIT,

ACTION OR PROCEEDING IN ANY SUCH COURT, AND OTHERWISE CONSTITUTES EFFECTIVE AND BINDING SERVICE IN EVERY RESPECT).

(c) ALL COMMUNICATIONS UNDER AND PURSUANT TO THIS AGREEMENT SHALL BE IN THE ENGLISH LANGUAGE.

SECTION 8.03. Modification; Waiver in Writing. Neither this Agreement nor any other Loan Document nor any of the terms hereof or thereof may be amended, changed, waived, discharged or terminated, nor shall any consent or approval of Lender be granted hereunder, unless such amendment, change, waiver, discharge, termination, consent or approval is in writing signed by Lender.

SECTION 8.04. Notices. All notices, consents, approvals, reports, designations, requests, waivers, elections and other communications (collectively, "Notices") authorized or required to be given pursuant to this Agreement shall be given in writing and either personally delivered to the Party to whom it is given or delivered by an established delivery service by which receipts are given or mailed by registered or certified mail, postage prepaid, or sent by facsimile or electronic mail with a copy sent on the following Business Day by one of the other methods of giving notice described herein, addressed to the Party at its address listed below. A Notice shall be deemed to have been given when delivered or upon refusal to accept delivery.

If to Borrower:

Montreign Holding Company, LLC
c/o Monticello Raceway
Route 17B
P.O. Box 5013
Monticello, New York 12701
Attention: Nanette Horner
Telephone Number: (845) 794-4100, ext. 574
Facsimile Number: (845) 807-0000

with a copy to:

Paul, Weiss, Rifkind, Wharton & Garrison LLP
1285 Avenue of the Americas
New York, NY 10019-6064
Attention: Harris B. Freidus
Telephone Number: (212) 373-3064
Facsimile Number: (212) 492-0064

If to Lender:

Kien Huat Realty III Limited
c/o 21st Floor Wisma Genting

Jalan Sultan Ismail
Kuala Lumpur
Malaysia
Attention: Gerard Lim
Telephone Number: + 603 2333 6820
Facsimile Number: +603 2162 4951

with a copy to:

Cleary Gottlieb Steen & Hamilton LLP
One Liberty Plaza
New York, New York 10006
Attention: Steven L. Wilner, Esq.
Telephone Number: (212) 225-2672
Facsimile Number: (212) 225-3999

Either Party may change its address for the receipt of Notices at any time by giving Notice thereof to the other Party.

SECTION 8.05. TRIAL BY JURY. LENDER AND BORROWER, TO THE FULLEST EXTENT THAT THEY MAY LAWFULLY DO SO, HEREBY AGREE NOT TO ELECT A TRIAL BY JURY OF ANY ISSUE TRIABLE OF RIGHT BY JURY, AND WAIVE ANY RIGHT TO TRIAL BY JURY FULLY TO THE EXTENT THAT ANY SUCH RIGHT SHALL NOW OR HEREAFTER EXIST WITH REGARD TO THE LOAN DOCUMENTS, OR ANY CLAIM, COUNTERCLAIM OR OTHER ACTION ARISING IN CONNECTION THEREWITH. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS GIVEN KNOWINGLY AND VOLUNTARILY BY LENDER AND BORROWER AND IS INTENDED TO ENCOMPASS INDIVIDUALLY EACH INSTANCE AND EACH ISSUE AS TO WHICH THE RIGHT TO A TRIAL BY JURY WOULD OTHERWISE ACCRUE. LENDER AND BORROWER ARE HEREBY AUTHORIZED TO FILE A COPY OF THIS SECTION IN ANY PROCEEDING AS CONCLUSIVE EVIDENCE OF THIS WAIVER BY BORROWER.

SECTION 8.06. Headings. The Article and Section headings in this Agreement are included herein for convenience of reference only and shall not constitute a part of this Agreement for any other purpose.

SECTION 8.07. No Assignment. Neither Lender nor Borrower may sell, assign or transfer any interest in the Loan Documents or any portion thereof (including either Party's respective rights, title, interests, remedies, powers and duties hereunder and thereunder).

SECTION 8.08. Expenses. Borrower shall reimburse Lender upon receipt of written notice from Lender for (i) all documented and reasonable out-of-pocket costs and expenses incurred by Lender (or any of its Affiliates) in connection

with the origination of the Loan, including reasonable legal fees and disbursements, accounting fees and any other third-party diligence materials; (ii) all documented and reasonable out-of-pocket costs and expenses incurred by Lender (or any of its Affiliates) in connection with (A) the negotiation, preparation, execution, delivery and administration of any consents, amendments, waivers or other modifications to this Agreement and the other Loan Documents and any other documents or matters requested by Borrower or by Lender and (B) enforcing or preserving any rights, in response to third party claims or the prosecuting or defending of any action or proceeding or other litigation, in each case against, under or affecting Borrower, this Agreement, or the other Loan Documents; and (iii) all documented and reasonable out-of-pocket costs and expenses (including attorney's fees) incurred by Lender (or any of its Affiliates) in connection with the enforcement of any obligations of Borrower, or a Default by Borrower, under the Loan Documents, including any refinancing, restructuring, settlement or workout and any insolvency or bankruptcy proceedings (including any applicable transfer taxes).

SECTION 8.09. Severability. Wherever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable Law, but if any provision of this Agreement shall be prohibited by or invalid under applicable Law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement.

SECTION 8.10. Preferences. Lender shall have no obligation to marshal any assets in favor of Borrower or any other party or against or in payment of any or all of the obligations of Borrower pursuant to this Agreement, the Note or any other Loan Document. Lender shall have the continuing and exclusive right to apply or reverse and reapply any and all payments by Borrower to any portion of the obligations of Borrower hereunder and under the Loan Documents. To the extent Borrower makes a payment or payments to Lender, which payment or proceeds or any portion thereof are subsequently invalidated, declared to be fraudulent or preferential, set aside or required to be repaid to a trustee, receiver or any other party under any bankruptcy Law, state or federal Law, common Law or equitable cause, then, to the extent of such payment or proceeds received, the obligations hereunder or portion thereof intended to be satisfied shall be revived and continue in full force and effect, as if such payment or proceeds had not been received by Lender.

SECTION 8.11. Remedies of Borrower. In the event that a claim or adjudication is made that Lender or its agents have unreasonably delayed acting in any case where by Law or under this Agreement or the other Loan Documents, any of such Persons has an obligation to act promptly, Borrower agrees that no such Person shall be liable for any monetary damages, and Borrower's sole remedies shall be limited to commencing an action seeking specific performance, injunctive relief and/or declaratory judgment. Without in any way limiting the foregoing, Borrower shall not assert, and hereby waives, any claim against Lender and/or its affiliates, directors,

employees, attorneys, agents or sub-agents, on any theory of liability, for direct, special, indirect, consequential or punitive damages (whether or not the claim therefor is based on contract, tort or duty imposed by any applicable legal requirement) arising out of, as a result of, or in any way related to, this Agreement or any other Loan Document or any agreement or instrument contemplated hereby or thereby or referred to herein or therein, the transactions contemplated hereby or thereby, the Loan or the use of the proceeds thereof or any act or omission or event occurring in connection therewith, and Borrower hereby waives, releases and agrees not to sue upon any such claim for any such damages, whether or not accrued and whether or not known or suspected to exist in its favor.

SECTION 8.12. Offsets, Counterclaims and Defenses. All payments made by Borrower hereunder or under the other Loan Documents shall be made irrespective of, and without any deduction for, any setoffs or counterclaims. Borrower waives the right to assert a counterclaim, other than a mandatory or compulsory counterclaim, in any action or proceeding brought against it by Lender arising out of or in any way connected with the Note, this Agreement, the other Loan Documents or the Indebtedness. Any assignee of Lender's interest in the Loan shall take the same free and clear of all offsets, counterclaims or defenses that are unrelated to the Loan.

SECTION 8.13. No Joint Venture. Nothing in this Agreement is intended to create a joint venture or partnership between Borrower and Lender.

SECTION 8.14. Conflict; Construction of Documents. In the event of any conflict between the provisions of this Agreement and the provisions of the Note or any of the other Loan Documents, the provisions of this Agreement shall prevail.

SECTION 8.15. Brokers and Financial Advisors. Borrower hereby represents that it has dealt with no financial advisors, brokers, underwriters, placement agents, agents or finders in connection with the transactions contemplated by this Agreement. Borrower hereby agrees to indemnify, defend and hold Lender harmless from and against any and all claims, liabilities, costs and expenses of any kind (including attorneys' fees and expenses) in any way relating to or arising from a claim by any Person that such Person acted on behalf of Borrower or Lender in connection with the transactions contemplated herein. The provisions of this Section 8.15 shall survive the expiration and termination of this Agreement and the repayment of the Indebtedness.

SECTION 8.16. Counterparts. This Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be an original, but all of which shall together constitute one and the same instrument. Any counterpart delivered by facsimile, pdf or other electronic means shall have the same import and effect as original counterparts and shall be valid, enforceable and binding for the purposes of this Agreement.

SECTION 8.17. Register. Lender, as non-fiduciary agent of Borrower, shall maintain a record that identifies each owner (including successors and assignees) of an interest in the Loan, including the name and address of the owner, and each owner's rights to principal and stated interest (the "Register"), and shall record all transfers of an interest in the Loan, including each assignment, in the Register. The entries in the Register shall be conclusive absent manifest error. The Borrower and Lender shall treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement. Failure to make any such recordation, or any error in such recordation, however, shall not affect Borrower's obligations in respect of the Loan. Borrower and Lender acknowledge that the Note is in registered form and may not be transferred except by register.

SECTION 8.18. General Indemnity.

(a) Borrower, at its sole cost and expense, shall protect, indemnify, reimburse, defend and hold harmless Lender and its officers, partners, members, directors, trustees, advisors, employees, agents, sub-agents, affiliates, successors, participants and assigns of any and all of the foregoing (collectively, the "Indemnified Parties") for, from and against, and shall be responsible for, any and all Damages of any kind or nature whatsoever that may be imposed on, incurred by, or asserted against any of the Indemnified Parties, in any way relating to or arising out of (i) any negligence or tortious act or omission on the part of Borrower or any of its agents, contractors, servants or employees; (ii) any failure on the part of Borrower to perform or comply with any of the terms of the Loan Documents; and (iii) any failure of Borrower to comply with any Laws; provided, however, that no Indemnified Party shall have the right to be indemnified hereunder to the extent that such Damages have been found by a final, non-appealable judgment of a court of competent jurisdiction to have resulted from the gross negligence or willful misconduct of such Indemnified Party. The indemnity and other obligations of the Borrower under this Section 8.18 shall not apply with respect to Taxes, other than any Taxes that represent Damages arising from any non-Tax claims.

(b) If for any reason (including violation of Law or public policy) the undertakings to defend, indemnify, pay and hold harmless set forth in this Section 8.18 are unenforceable in whole or in part or are otherwise unavailable to Lender or insufficient to hold it harmless, then Borrower shall contribute to the amount paid or payable by Lender as a result of any Damages the maximum amount Borrower is permitted to pay under Law. The obligations of Borrower under this Section 8.18 will be in addition to any liability that Borrower may otherwise have hereunder and under the other Loan Documents, will extend upon the same terms and conditions to any Affiliate of Lender and the partners, members, directors, agents, employees and controlling persons (if any), as the case may be, of Lender and any such Affiliate, and will be binding upon and inure to the benefit of any successors, assigns, heirs and personal representatives of Borrower, Lender, any such Affiliate and any such Person.

(c) At the option of the Indemnified Parties and in their sole discretion, upon written request by any Indemnified Party, Borrower shall defend such Indemnified Party (if requested by any Indemnified Party, in the name of the Indemnified Party) by attorneys and other

professionals reasonably approved by such Indemnified Party. Notwithstanding the foregoing, any Indemnified Party may engage its own attorneys and other professionals to defend or assist it (chosen at Lender's sole discretion), and, at the option of such Indemnified Party, its attorneys shall control the resolution of any claim or proceeding. Upon demand, Borrower shall pay or, in the sole discretion of the Indemnified Parties, reimburse, the Indemnified Parties for the payment of reasonable fees and disbursements of attorneys, engineers, environmental consultants, laboratories and other professionals in connection therewith.

(d) Any amounts payable to Lender by reason of the application of this Section 8.18 shall become immediately due and payable and shall bear interest at the Default Rate from the date Damages are sustained by the Indemnified Parties until paid.

(e) The provisions of and undertakings and indemnification set forth in this Section 8.18 shall survive the satisfaction and payment in full of the Indebtedness and termination of this Agreement.

SECTION 8.19. No Third-Party Beneficiaries. This Agreement and the other Loan Documents are solely for the benefit of Lender and Borrower, and nothing contained in this Agreement or the other Loan Documents shall be deemed to confer upon anyone other than Lender, Borrower and Indemnified Parties any right to insist upon or to enforce the performance or observance of any of the obligations contained herein or therein. All conditions to the obligations of Lender to make the Loan hereunder are imposed solely and exclusively for the benefit of Lender, and no other Person shall have standing to require satisfaction of such conditions in accordance with their terms or be entitled to assume that Lender will refuse to make the Loan in the absence of strict compliance with any or all thereof, and no other Person shall under any circumstances be deemed to be a beneficiary of such conditions, any or all of which may be freely waived in whole or in part by Lender if, in Lender's sole discretion, Lender deems it advisable or desirable to do so.

SECTION 8.20. Right of Set-Off. In addition to any rights now or hereafter granted under applicable Law or otherwise, and not by way of limitation of any such rights, during the continuance of an Event of Default, Lender may from time to time, without presentment, demand, protest or other notice of any kind (all of such rights being hereby expressly waived), set-off and appropriate and apply any and all deposits (general or special) and any other indebtedness at any time held or owing by Lender (including branches, agencies or Affiliates of Lender wherever located) to or for the credit or the account of Borrower against the obligations and liabilities of Borrower to Lender hereunder, under the Note, the other Loan Documents or otherwise, irrespective of whether Lender shall have made any demand hereunder and although such obligations, liabilities or claims, or any of them, may be contingent or unmatured, and any such set-off shall be deemed to have been made immediately upon the occurrence of an Event of Default even though such charge is made or entered on the books of Lender subsequent thereto.

SECTION 8.21. Exculpation of Lender. Lender neither undertakes nor assumes any responsibility or duty to Borrower or any other Person to select, review, inspect, examine, supervise, pass judgment upon or inform Borrower or any other Person of any due diligence conducted by Lender. Any such due diligence, selection, review, inspection, examination and the like, and any other due diligence conducted by Lender, is solely for the purpose of protecting Lender's rights under the Loan Documents, and shall not render Lender liable to Borrower or any other Person for the existence, sufficiency, accuracy, completeness or legality thereof. The Indemnified Parties shall not be responsible or liable for any Damages of any kind or nature whatsoever that may be imposed on, incurred by, or asserted against any of the Indemnified Parties, in any way relating to or arising out of Lender's interest in the Loan.

SECTION 8.22. No Fiduciary Duty.

(a) Borrower acknowledges that, in connection with this Agreement, the other Loan Documents and the Transaction, Lender has relied upon and assumed the accuracy and completeness of all of the financial, legal, regulatory, accounting, tax and other information provided to, discussed with or reviewed by Lender for such purposes, and Lender does not assume any liability therefor or responsibility for the accuracy, completeness or independent verification thereof. Lender, its Affiliates and their respective stockholders and employees (for purposes of this Section, the "Lending Parties") have no obligation to conduct any independent evaluation or appraisal of the assets or liabilities (including any contingent, derivative or off-balance sheet assets and liabilities) of Borrower or any other Person or any of their respective Affiliates or to advise or opine on any related solvency or viability issues.

(b) It is understood and agreed that (i) the Lending Parties shall act under this Agreement and the other Loan Documents as an independent contractor, (ii) the Transaction is an arm's-length commercial transactions between the Lending Parties, on the one hand, and Borrower, on the other, (iii) each Lending Party is acting solely as principal and not as the agent or fiduciary of Borrower or their respective Affiliates, stockholders, employees or creditors or any other Person and (iv) nothing in this Agreement, the other Loan Documents, the Transaction or otherwise shall be deemed to create (i) a fiduciary duty (or other implied duty) on the party of any Lending Party to Borrower, any of their respective Affiliates, stockholders, employees or creditors, or any other Person or (ii) a fiduciary or agency relationship between Borrower or any of their respective Affiliates, stockholders, employees or creditors, on the one hand, and the Lending Parties, on the other. Borrower agrees that neither it nor any of its respective Affiliates shall make, and hereby waives, any claim against the Lending Parties based on an assertion that any Lending Party has rendered advisory services of any nature or respect, or owes a fiduciary or similar duty to Borrower or its respective Affiliates, stockholders, employees or creditors. Nothing in this Agreement or the other Loan Documents is intended to confer upon

any other Person (including Affiliates, stockholders, employees or creditors of Borrower) any rights or remedies by reason of any fiduciary or similar duty.

(c) Borrower acknowledges and agrees that Borrower has consulted its own legal and financial advisors to the extent it deemed appropriate and that it is responsible for making its own independent judgment with respect to this Agreement, the other Loan Documents, the Transaction and the process leading thereto.

SECTION 8.23. PATRIOT Act Records. Lender hereby notifies Borrower that pursuant to the requirements of the PATRIOT Act, it is required to obtain, verify and record information that identifies Borrower, which information includes the name and address of Borrower and other information that will allow Lender to identify Borrower in accordance with the PATRIOT Act.

SECTION 8.24. Prior Agreements. THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS CONTAIN THE ENTIRE AGREEMENT OF THE PARTIES HERETO AND THERETO IN RESPECT OF THE TRANSACTIONS CONTEMPLATED HEREBY AND THEREBY, AND ALL PRIOR AGREEMENTS AMONG OR BETWEEN SUCH PARTIES IN RESPECT OF THE TRANSACTIONS CONTEMPLATED HEREBY, WHETHER ORAL OR WRITTEN, INCLUDING ANY TERM SHEETS, CONFIDENTIALITY AGREEMENTS AND COMMITMENT LETTERS, ARE SUPERSEDED BY THE TERMS OF THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS.

SECTION 8.25. Delay Not a Waiver. Neither any failure nor any delay on the part of Lender in insisting upon strict performance of any term, condition, covenant or agreement, or exercising any right, power, remedy or privilege hereunder, or under the Note or under any other Loan Document, or under any other instrument given as security therefor, shall operate as or constitute a waiver thereof, nor shall a single or partial exercise thereof preclude any other future exercise, or the exercise of any other right, power, remedy or privilege. In particular, and not by way of limitation, by accepting payment after the due date of any amount payable under this Agreement, the Note or any other Loan Document, Lender shall not be deemed to have waived any right either to require prompt payment when due of all other amounts due under this Agreement, the Note or the other Loan Documents, or to declare a default for failure to effect prompt payment of any such other amount.

SECTION 8.26. Determinations. Each determination or calculation by Lender hereunder shall, in the absence of manifest error, be conclusive and binding on the Parties.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be duly executed by their duly authorized representatives, all as of the day and year first above written.

LENDER:

By: KIEN HUAT REALTY III LIMITED,
a corporation organized in the Isle of Man

By: /s/ Gerard Lim Ewe Keng
Name: Gerard Lim Ewe Keng
Title: Authorized Signatory

BORROWER:

By: MONTREIGN HOLDING COMPANY, LLC,
a New York limited liability company

By: /s/ Joseph D'Amato
Name: Joseph D'Amato
Title: Authorized Signatory

EXHIBIT 10.58

PROMISSORY NOTE

MONTREIGN HOLDING COMPANY, LLC

$32,320,000 New York, New York
January 24, 2017

FOR VALUE RECEIVED, the undersigned MONTREIGN HOLDING COMPANY, LLC, a New York limited liability company having an address at c/o Monticello Casino and Raceway, Route 17B, P.O. Box 5013, Monticello, New York (the "Maker"), promises to pay to KIEN HUAT REALTY III LIMITED, a corporation organized in the Isle of Man, having its offices c/o 21st Floor Wisma Genting, Jalan Sultan Ismail, Kuala Lumpur, Malaysia, and its registered successors and assigns (the holder of this Note from time to time, or any portion hereof, is hereinafter referred to as the "Holder") or to such other account pursuant to such other wiring instruction as the Holder may from time to time designate in writing, the original principal amount of THIRTY TWO MILLION THREE HUNDRED TWENTY THOUSAND DOLLARS AND NO CENTS ($32,320,000.00), plus all accrued and unpaid interest which is added thereto pursuant to the terms hereof or so much thereof as may be outstanding from time to time (the "Principal Amount"), together with interest thereon and all other amounts payable to the Holder under the Loan Documents with respect to the Loan, such principal, interest and other amounts to be payable as provided in the Loan Agreement (as defined below) and the other Loan Documents. Capitalized terms used herein but not otherwise defined herein shall have the meanings assigned to such terms in the Loan Agreement.

This Promissory Note (this "Note") is the Note referred to in that certain Loan Agreement, dated as of the date hereof, by and between the Maker, as borrower and the Holder, as lender, (as amended, modified or supplemented and in effect from time to time, the "Loan Agreement") and evidences the Loan made by the Holder. Reference to the Loan Agreement is hereby made for a statement of the rights of the Holder and the duties and obligations of the Maker, but neither this reference to the Loan Agreement nor any provision thereof shall affect or impair the absolute and unconditional obligation of the Maker to pay the principal, interest and other amounts payable with respect to this Note when due. The Principal Amount shall bear interest at the rates provided for in the Loan Agreement.

All interest accrued pursuant to the Loan Agreement with respect to the Loan and all prepayments of principal, and the resulting changes to the Principal Amount, may be endorsed by the Holder upon Schedule A hereto attached which is a part of this Note; provided, however, that the failure of the Holder to make any such endorsement shall not in any manner affect the obligation of the Maker to repay the Principal Amount in accordance with the terms hereof. Such endorsements (absent manifest error) shall be prima facie evidence of the Principal Amount.

The principal sum evidenced by this Note, together with accrued interest and other sums or amounts due hereunder, shall become immediately due and payable at the option of the Holder upon the occurrence and during the continuation of any Event of Default in accordance with the provisions of the Loan Agreement.

With respect to the amounts due and payable pursuant to this Note, the Maker waives demand, presentment and notice, except for notices required by any Governmental Authority and the Loan Documents.

The Maker shall have the right to voluntarily prepay this Note without penalty pursuant to and in accordance with the terms and provisions of the Loan Agreement.

In no event shall the amount of interest (and any other sums or amounts that are deemed to constitute interest under applicable Law) due or payable hereunder (including interest calculated at the Default Rate) exceed the maximum rate of interest designated by applicable Law (the "Maximum Amount"), and in the event such excess payment is inadvertently paid by the Maker or inadvertently received by the Holder, then such excess sum shall be credited as a payment of principal on this Note, and if in excess of the outstanding Principal Amount of this Note, shall be immediately returned to the Maker upon such determination. It is the express intent hereof that the Maker not pay and the Holder not receive, directly or indirectly, interest in excess of the Maximum Amount.

Other than as expressly set forth in the Loan Documents, this Note may not be assigned in whole or in part by the Maker.

The Holder shall not by any act, delay, omission or otherwise be deemed to have amended, modified, supplemented, waived, extended, discharged or terminated any of its rights or remedies, except by an amendment, modification, supplement, waiver, extension, discharge or termination in writing and signed by the appropriate parties, as may be applicable pursuant to the Loan Agreement. All rights and remedies of the Holder under the terms of this Note and applicable statutes or rules of law shall be cumulative, and may be exercised successively or concurrently. The Maker agrees that there are no defenses, equities or setoffs with respect to the obligations set forth herein.

Wherever possible, each provision of this Note shall be interpreted in such manner as to be effective and valid under applicable Law, but if any provision of this Note shall be prohibited by or invalid under applicable Law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Note.

This Note shall be governed by, and construed in accordance with, the laws of the State of New York without regard to the conflict of laws principles thereof, to the extent the application of the laws of another jurisdiction would be required thereby.

ANY LEGAL SUIT, ACTION OR PROCEEDING AGAINST THE HOLDER OR THE MAKER ARISING OUT OF OR RELATING TO THIS NOTE SHALL BE

INSTITUTED IN ANY FEDERAL OR STATE COURT IN NEW YORK, NEW YORK. THE MAKER, AND BY ACCEPTANCE OF THIS NOTE, THE HOLDER, HEREBY (i) IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY OBJECTION WHICH IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY SUCH SUIT, ACTION OR PROCEEDING BROUGHT IN SUCH A COURT AND ANY CLAIM THAT ANY SUCH PROCEEDING BROUGHT IN SUCH A COURT HAS BEEN BROUGHT IN AN INCONVENIENT FORUM, AND (ii) IRREVOCABLY SUBMITS TO THE JURISDICTION OF ANY SUCH COURT IN ANY SUIT, ACTION OR PROCEEDING.

THE MAKER AND, BY ACCEPTANCE HEREOF, THE HOLDER, TO THE FULLEST EXTENT THAT EACH MAY LAWFULLY DO SO, WAIVE TRIAL BY JURY IN ANY ACTION OR PROCEEDING (INCLUDING, WITHOUT LIMITATION, ANY TORT ACTION), BROUGHT BY EITHER PARTY HERETO WITH RESPECT TO THIS NOTE OR THE OTHER LOAN DOCUMENTS.

FOR PURPOSES OF SECTIONS 1272, 1273 AND 1275 OF THE INTERNAL REVENUE CODE OF 1986, AS AMENDED, THIS NOTE IS BEING ISSUED WITH ORIGINAL ISSUE DISCOUNT. REQUESTS FOR INFORMATION REGARDING THE ORIGINAL ISSUE DISCOUNT ON THE NOTES MAY BE DIRECTED TO MAKER AT MONTICELLO CASINO AND RACEWAY, ROUTE 17B, P.O. BOX 5013, MONTICELLO, NEW YORK.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Maker has caused this Promissory Note to be executed as of the day and year first above written.

MAKER:

By: MONTREIGN HOLDING COMPANY, LLC
a New York limited liability company

By: /s/ Joseph D'Amato
Name: Joseph D'Amato
Title: Authorized Signatory

EXHIBIT 10.59

PLEDGE AND SECURITY AGREEMENT

THIS PLEDGE AND SECURITY AGREEMENT (this "Agreement") is made as of January 24, 2017 by EMPIRE RESORTS, INC., a Delaware corporation ("Pledgor"), in favor of KIEN HUAT REALTY III LIMITED, a corporation organized in the Isle of Man, as lender (together with its successors and assigns, "Lender").

RECITALS

A. WHEREAS, on the date hereof, Lender has made a loan to MONTREIGN HOLDING COMPANY, LLC, a New York limited liability company ("Borrower") in the amount of $32,320,000.00 (the "Loan") pursuant to the terms of that certain Loan Agreement of even date herewith by and between Lender and Borrower (as amended, modified, supplemented or replaced from time to time, the "Loan Agreement").

B. WHEREAS, Borrower was formed as a New York limited liability company and is governed by the terms and provisions of that certain Operating Agreement, dated as of January 13, 2017 (the "Formation Agreement").

C. WHEREAS, Pledgor is the legal and beneficial owner of 100% of the issued and outstanding membership interests in Borrower.

D. WHEREAS, Lender is unwilling to make the Loan unless Pledgor enters into this Agreement.

NOW, THEREFORE, for Ten Dollars ($10.00) and in consideration of the mutual covenants and agreements herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

Section 1. Capitalized Terms. All capitalized terms used but not defined herein shall have the respective meanings ascribed thereto in the Loan Agreement and, for the purposes of this Agreement, the following capitalized terms shall have the following meanings:

"Article 8 Matter" means any action, decision, determination or election by Borrower or its member(s), shareholders or partners, as applicable, that its membership interests, partnership interests, stock or other equity interests, as applicable, be, or cease to be, a "security" as defined in and governed by Article 8 of the Uniform Commercial Code, and all other matters related to any such action, decision, determination or election.

"Bankruptcy Code" means Title 11 of the United States Code, as amended, modified, succeeded or replaced, from time to time.

"Distributions" means all distributions, dividends and payments (whether in cash or in kind) and all interest in respect of, and all proceeds of, any instrument or interest constituting part of the Pledged Collateral, of whatever kind or description, real or personal, whether in the ordinary course or in partial or total liquidation or dissolution, or any recapitalization, reclassification of capital, or reorganization or reduction of capital, or otherwise.

"Equity Interests" means all limited liability company membership interests or other equity interests of, and all other right, title and interest now owned or hereafter acquired by, Pledgor in and to Borrower, including the interests described on Schedule 1 attached hereto.

"Event of Default" shall have the meaning ascribed thereto in the Loan Agreement.

"General Intangibles" shall have the meaning ascribed thereto in Article 9 of the UCC.

"No-Action Letters" means various No-Action Letters issued by the SEC staff as described in Section 13(b) below.

"Obligations" means Borrower's obligations provided in the Loan Agreement, the Note and the other Loan Documents to pay the Indebtedness payable to Lender in respect of the Loan thereunder, and to perform and observe all of the terms, covenants and provisions of each of the Loan Documents, including the payment of interest that, but for the commencement of a case under the Bankruptcy Code, would accrue on such Indebtedness.

"Pledged Collateral" means all of Pledgor's right, title and interest, whether now owned or hereafter acquired, in, under and to (i) the Formation Agreement and the Equity Interests, including, without limitation, Pledgor's share of the profits, losses and capital of Borrower, and all Voting Rights, claims, powers, privileges, benefits, options or rights of any nature whatsoever which currently exist or may be issued or granted by Borrower to Pledgor, and all instruments, whether heretofore or hereafter acquired, evidencing such rights and interests, (ii) all Distributions, (iii) all General Intangibles relating to the foregoing, (iv) the proceeds (including claims against third parties), products and accessions of the foregoing, (v) all replacements and substitutions of the foregoing, (vi) all books and records (including computerized records, software and disks) relating to any of the foregoing, (vii) all other rights appurtenant to the property described in foregoing clauses (i) through (vi), and (viii) any stock certificates, share certificates, limited liability company certificates, partnership certificates or other certificates or instruments evidencing the foregoing.

"SEC" means the United States Securities and Exchange Commission.

"Securities Act" means the Securities Act of 1933, as it may be amended from time to time.

"Security Interest" shall have the meaning ascribed thereto in Section 2 hereof.

"Securities Laws" means the Securities Act and applicable state securities laws.

"UCC" means the Uniform Commercial Code as in effect from time to time in the State of New York.

"Voting Rights" means all of Pledgor's rights under the Formation Agreement to vote and give approvals, consents, decisions and directions and exercise any other similar right with respect to the Pledged Collateral.

Section 2. Pledge. Pledgor hereby grants, pledges, hypothecates, transfers and assigns to Lender a first priority perfected, continuing security interest in and lien on the Pledged Collateral and in all proceeds thereof (the "Security Interest") as collateral security for the prompt and complete repayment and performance when due (whether at the stated maturity or otherwise) of the Obligations. No filing or other action is or will be necessary to perfect such first priority security interest of Lender in the Equity Interests that are represented by a certificate, except for delivery to Lender of the certificates evidencing

the Equity Interests endorsed or accompanied by appropriate powers duly endorsed in blank. The first priority security interest of Lender in any of the Pledged Collateral that is not represented by a certificate, if any, shall be perfected by the filing of a financing statement or statements as hereinafter provided.

Section 3. Distributions. Pledgor shall have the right to receive all Distributions in respect of the Pledged Collateral unless an Event of Default shall have occurred and be continuing and Lender shall have provided written notice of its intent to exercise remedies. Pledgor hereby irrevocably authorizes and directs Borrower, upon the occurrence and during the continuance of an Event of Default under the Loan Agreement and after Lender shall have provided the written notice described in the preceding sentence, to distribute, transfer, pay and deliver directly to Lender, and not to Pledgor, in accordance with that certain Consent of Borrower attached hereto as Exhibit A and made a part hereof (the "Consent"), any and all Distributions at such time and in such manner as such Distributions would otherwise be distributed, transferred, paid and delivered to Pledgor, for application in accordance with the Loan Agreement; provided that, notwithstanding the occurrence and continuance of an Event of Default, the Pledgor may continue to receive dividends and distributions made pursuant to subclause (b) and subclause (c) of Section 6.05 of the Credit Agreement. If, during the continuance of an Event of Default under the Loan Agreement, Pledgor receives any Distributions in violation of the preceding sentence, Pledgor shall accept the same as Lender's agent and hold the same in trust on behalf of and for the benefit of Lender and shall promptly deliver the same forthwith to Lender for application in accordance with the Loan Agreement, together with appropriate forms of assignment, UCC financing statements, and other appropriate instruments, if necessary, indicating the Security Interests of Lender in and to such Distribution. Pledgor authorizes and directs Lender to apply any Distributions received by Lender in the manner described in the Loan Agreement.

Section 4. Voting Rights.

(a) Pledgor hereby collaterally assigns the Voting Rights to Lender, subject to the terms and provisions of this Agreement and the other Loan Documents.

(b) Pledgor may exercise the Voting Rights unless an Event of Default shall have occurred and be continuing and lender shall have provided written notice of its intent to exercise remedies, provided that Pledgor shall not exercise the Voting Rights in a manner which would be inconsistent with or result in a violation of any provision of this Agreement, the Loan Agreement or any other Loan Document. Upon the occurrence and during the continuance of an Event of Default and after Lender shall have provided the written notice described in the preceding sentence, all rights of Pledgor to exercise the Voting Rights shall cease and Lender shall have the right to exercise, in person or by its nominees or proxies, all Voting Rights assigned to it hereunder and Lender shall exercise such Voting Rights in such manner as Lender in its sole discretion shall deem to be in Lender's best interests (subject to the terms of this Agreement and the other Loan Documents). Upon the occurrence and during the continuance of an Event of Default, Pledgor shall effect the directions of Lender in connection with any such exercise in accordance with this Agreement.

(c) In connection with Lender's exercise of the Voting Rights, Pledgor shall cause Borrower to rely on a notice from Lender stating that an Event of Default has occurred and is continuing under the Loan Agreement or any other Loan Document, in which event no further direction from Pledgor shall be required to effect the assignment of Voting Rights hereunder from Pledgor to Lender, and Borrower shall immediately permit Lender to exercise all of the Voting Rights in respect of the business and affairs of Borrower. If the applicable Event of Default is no longer continuing, Pledgor shall again automatically have all of the rights to exercise the Voting Rights and Lender shall so notify Borrower.

(d) Pledgor acknowledges that, except for this Agreement and the other Loan Documents, it has not entered into, and it is not bound by the terms of, any agreement or understanding, whether oral or written, with respect to the purchase, sale, transfer or voting of any Voting Rights.

Section 5. Termination of Agreement. Immediately upon payment in full of all of the Obligations (other than contingent indemnity obligations) in accordance with the terms of the Loan Agreement and the other Loan Documents, this Agreement shall immediately cease, terminate and be of no further force or effect. Thereafter, upon the request of Pledgor and at Pledgor's sole cost and expense, Lender shall deliver to Pledgor, without any representations, warranties or recourse of any kind whatsoever, such of the Pledged Collateral (including any certificate or certificates evidencing the Equity Interests, if any, along with the partnership, membership or stock powers, as applicable, endorsed in blank, if any) as then may be held or controlled by Lender hereunder, and execute and deliver to Pledgor such documents as Pledgor may reasonably request to evidence such termination, including, without limitation, UCC termination statements; provided that if Lender has misplaced or is otherwise unable to deliver the Pledged Collateral (including any certificate or certificates evidencing the Equity Interests, along with the membership powers endorsed in blank), Lender shall execute and deliver to Pledgor a lost certificate affidavit and indemnity with respect to the Pledged Collateral. Any Pledged Collateral released from the Lien of this Agreement, the Loan Agreement and the other Loan Documents in accordance therewith pursuant to this Section 5 shall, effective upon such release, no longer be deemed "Pledged Collateral" for any purpose under this Agreement or the other Loan Documents. Lender agrees, at the request and sole cost and expense of Pledgor, to notify Borrower and any other third party reasonably requested by Pledgor of such termination; provided that, if Pledgor shall arrange for repayment of the Obligations in their entirety by a third party, at Pledgor's request and at its sole cost and expense, Lender shall assign the Note, this Agreement and any other Loan Documents (to the extent requested by Pledgor) to such third party, without recourse, representation or warranty.

Section 6. Liability. The trustees, officers, directors, employees and agents of Lender shall have no personal liability under this Agreement and any obligation of Lender under this Agreement to Pledgor or Borrower shall be satisfied solely from the assets of Lender.

Section 7. Rights of Lender.

(a) Lender shall not be liable for failure to collect or realize upon the Obligations or any collateral security or guarantee therefor, or any part thereof, or for any delay in so doing nor be under any obligation to take any action whatsoever with regard thereto. Any part or all of the Pledged Collateral held by Lender may, without notice, but only during an Event of Default, be transferred into the name of Lender or its nominee and Lender or its nominee may thereafter without notice, exercise all Voting Rights and other rights in respect of the Pledged Collateral, including the exercise of any and all rights of conversion, exchange, subscription or any other rights, privileges or options in respect of the Pledged Collateral, as if it were the absolute owner thereof, all without liability except to account for property actually received by Lender or its nominee; provided, however, that Lender or its nominee shall have no duty to exercise any of the foregoing actions, or any liability for failure to do so or delay in so doing.

(b) Lender shall not be liable for the consequence of any Voting Rights cast or given by Lender in accordance with this Agreement, except for any such liability resulting solely from Lender's gross negligence, bad faith or willful misconduct.

(c) Except as otherwise expressly set forth in this Agreement, and except to the extent caused by Lender's gross negligence, bad faith or willful misconduct, Lender shall have no liability to Pledgor with respect to the receipt and application by Lender of Distributions, the holding by Lender of

any Pledged Collateral pursuant to and in accordance with this Agreement and the other Loan Documents, or Lender's taking, or failure to take, any action (including the obtaining of insurance) with respect to any Pledged Collateral.

(d) Pledgor hereby authorizes Lender in its absolute discretion, prior to the termination of this Agreement pursuant to Section 5 hereof, (i) to file any and all financing and continuation statements in any jurisdiction or jurisdictions that Lender deems appropriate (including, without limitation, all initial financing statements and continuation statements), naming Pledgor as debtor, with respect to any of the Pledged Collateral (including such as may be necessary to renew, extend and continue the perfection of the Security Interest of Lender) without consent of or authentication by Pledgor and consents to a photocopy or other reproduction of this Agreement or of a financing statement being sufficient as a financing statement; and (ii) to file UCC financing statements indicating that the collateral covered by such financing statements is "all assets in which Pledgor now or hereafter has rights."

Section 8. Remedies. Upon the occurrence and during the continuance of an Event of Default, Lender, without demand of performance or other demand, advertisement or notice of any kind (except as specified below or required by law) to or upon Pledgor or any other Person (all and each of which demands, advertisements and/or notices is hereby expressly waived to the extent permitted by applicable law), may, without obligation to resort to other security, and in addition to and not in limitation of any and all other remedies reserved to Lender hereunder or at law or in equity, forthwith collect, receive, appropriate and realize upon the Pledged Collateral, or any part thereof, and/or may forthwith sell, assign, give an option or options to purchase, contract to sell or otherwise dispose of and deliver said Pledged Collateral, or any part thereof, in one or more parcels at public or private sale or sales, at any exchange, broker's board or at Lender's offices or elsewhere upon such terms and conditions as it may reasonably deem advisable and at such prices as it may deem best with respect to its own interests, for cash or on credit or for future delivery without assumption of any credit risk, with the right to Lender upon any such sale or sales, public or private, to purchase the whole or any part of the Pledged Collateral so sold, free of any right or equity of redemption in Pledgor, which right or equity is hereby expressly waived and released to the extent permitted by law. Upon the occurrence and during the continuance of an Event of Default, Lender shall have the right to proceed against the Pledged Collateral of Pledgor as it shall determine in its sole discretion. Lender shall not be obligated to make any sale of the Pledged Collateral if it shall determine not to do so, regardless of the fact that notice of sale of the Pledged Collateral may have been given. Lender may, without notice or publication, adjourn any public or private sale or cause the same to be adjourned from time to time by announcement at the time and place fixed for sale, and such sale may, without further notice, be made at the time and place to which the same was so adjourned. In case the sale of all or any part of the Pledged Collateral is made on credit or for future delivery, the Pledged Collateral so sold shall be retained by Lender until the sale price is paid by the purchaser or purchasers thereof, Lender shall not incur any liability in case any such purchaser or purchasers shall fail to take and pay for the Pledged Collateral so sold and, in case of any such failure, such Pledged Collateral may be sold again upon like notice. To the extent permitted by law, Pledgor hereby waives all rights of marshaling the Pledged Collateral and any other security at any time held by Lender and any right of valuation or appraisal. Lender shall apply the net proceeds of any such collection, recovery, receipt, appropriation, realization or sale, after deducting all reasonable costs and expenses of every kind incurred therein or incidental to the care, safekeeping or otherwise of any and all of the Pledged Collateral or in any way relating to the rights of Lender hereunder, including reasonable attorney's fees and legal expenses, to the payment in whole or in part, of the Obligations together with interest thereon at the Default Rate under the Loan Agreement, and only after so applying such net proceeds and after the payment by Lender of any other amount required by any provision of law, including, without limitation, the UCC and any version of the Uniform Commercial Code in effect in any applicable jurisdiction, need Lender account for the surplus,

if any, to Pledgor. Pledgor agrees that Lender need not give more than 10 Business Days notice of the time and place of any public sale or of the time and place if any private sale or other intended disposition is to take place and that such notice is commercially reasonable notification of such matters. No notification need be given to Pledgor if it has, after default, signed a statement renouncing or modifying any right to notification of sale or other intended disposition. Lender's rights and remedies hereunder are cumulative, at law or in equity, with any and all of Lender's other rights in connection with the Loan, and Lender may exercise any of such rights or remedies in any order. In addition to the rights and remedies granted to it in this Agreement and any other instrument securing, evidencing or relating to any of the Obligations, Lender shall have all the rights and remedies of a secured party under the UCC, as if such rights and remedies were fully set forth herein, and any rights and remedies of a secured party under any version of the Uniform Commercial Code in effect in any applicable jurisdiction in which such rights or remedies are sought to be enforced.

Section 9. Right to Become Member, Shareholder or Partner. (1) In addition to the remedies set forth in Section 8 hereof, upon the occurrence and during the continuance of an Event of Default, Lender may, by delivering written notice to Borrower and Pledgor, after having acquired the right, title and interest of Pledgor's Equity Interests, succeed, or designate one or more nominees(s) to succeed, to all right, title and interest of Pledgor (including, without limitation, the right, if any, to vote on or take any action with respect to Borrower) as a member, shareholder or partner of Borrower, as applicable, relating to the Equity Interests acquired. Pledgor hereby irrevocably authorizes and directs Borrower on receipt of any such notice (i) to deem and treat Lender or its nominee in all respects as a member, shareholder or partner, as applicable (and not merely an assignee of a member, shareholder or partner, as applicable), of Borrower entitled to exercise all the rights, powers and privileges (including the right to vote on or take any action with respect to any and all membership, shareholder or partnership matters, as applicable, pursuant to the Formation Agreement) to receive all Distributions, to be credited with the capital account and to have all other rights, powers and privileges appertaining to such membership, shareholder or partnership interests, as applicable, to which Pledgor would have been entitled had Pledgor's membership, shareholder or partnership interests, as applicable, not been transferred to Lender or such nominee, (ii) to execute amendments to the Formation Agreement admitting Lender or such nominee as a member, shareholder or partner, as applicable, in place of Pledgor and (iii) to issue the membership, shareholder or partnership certificate(s), as applicable, in the name of Lender or its nominee, with respect to each of the Equity Interests represented by a certificate or certificates.

(a) Notwithstanding anything to the contrary contained herein, upon acquisition of any portion of the Pledged Collateral by Lender or any other Person through foreclosure or assignment in lieu of foreclosure, Pledgor shall not be required to make additional contributions or other payments to Borrower.

Section 10. Representations, Warranties and Covenants of Pledgor. Pledgor hereby represents and warrants to and covenants and agrees with Lender with respect to itself and the Pledged Collateral that:

(a) Pledgor is, and at all times will maintain its existence as, a corporation organized solely under the laws of the State of Delaware, has all requisite power and authority to execute, deliver and perform this Agreement and the Formation Agreement and to consummate the transactions contemplated hereby.

(b) This Agreement has been duly authorized, executed and delivered by Pledgor, is the legal, valid and binding obligation of Pledgor, and is enforceable as to Pledgor in accordance with its

terms, subject, however, to bankruptcy, insolvency and other rights of creditors generally and to general principles of equity.

(c) The execution, delivery, observance and performance by Pledgor of this Agreement and the transactions contemplated hereby will not result in any violation of the Formation Agreement or, to Pledgor's knowledge, of any constitutional provision, law, statute, ordinance, rule or regulation applicable to it; or of any judgment, decree or order applicable to it and will not conflict with, or cause a breach of, or default under, any such term or, except for the liens created or contemplated hereby, result in the creation of any mortgage lien, pledge, charge or encumbrance upon any of its properties or assets pursuant to any such term.

(d) It is not necessary for Pledgor to obtain or make any (i) governmental consent, approval or authorization, registration or filing from or with any governmental authorities or (ii) consent, approval, waiver or notification of partners, creditors, lessors or other nongovernmental persons, in each case, in connection with the execution and delivery of this Agreement or the consummation of the transactions herein presently contemplated which has not been filed or obtained.

(e) Pledgor is as of the date hereof (i) the sole economic, managing and voting member of Borrower, (ii) the owner of 100% of the membership interests in Borrower and (iii) the sole owner of all direct beneficial interests in the Pledged Collateral. Pledgor owns the Pledged Collateral, and the Pledged Collateral is and shall remain, free and clear of any lien, mortgage, encumbrance, charge, pledge, security interest, or claim of any kind (including, without limitation, any unconditional sale or other title retention agreement) other than as created by this Agreement or as permitted by the Loan Agreement.

(f) The Equity Interests are, and Pledgor covenants and agrees that it will ensure at all times that such Equity Interests remain, "securities" within the meaning of the UCC and, in particular, with respect to the Equity Interests that are represented by a certificate or certificates, are "certificated securities" within the meaning of Section 8-102(a)(4) of the UCC, and Pledgor has taken all steps necessary to afford Lender "control" of such Equity Interests within the meaning of the UCC.

(g) Pledgor covenants and agrees to defend, at its sole cost and expense, Lender's right, title and Security Interest in and to the Pledged Collateral and the proceeds thereof, created pursuant hereto, against the claims and demands of all Persons whomsoever.

(h) The Equity Interests have been duly authorized and validly issued and are fully paid and nonassessable.

(i) The Equity Interests constitute 100% of the interests in capital, profits, distribution, management and voting rights in Borrower.

(j) Upon Lender obtaining and maintaining possession of the certificates identified on Schedule 1 and the filing of a UCC financing statement adequately describing the Pledged Collateral in the office of the Secretary of State of the State of Delaware, all steps necessary to create and perfect the security interest created by this Agreement as a valid and continuing first priority lien on, and first priority perfected (subject to possession of the certificates and filing of the financing statements referenced above) security interest in, the Pledged Collateral, in favor of Lender, prior to all other liens, security interests and other claims of any sort whatsoever, have been taken. Pledgor has not granted a security interest in the Pledged Collateral to any other party, and the security interest granted pursuant to this Agreement in the Pledged Collateral constitutes a valid, perfected first priority security interest in the Pledged Collateral, enforceable as such against all creditors of, and purchasers from, Pledgor.

(k) Except as set forth on Schedule 1, Pledgor has not changed its name, or used, adopted or discontinued the use of any trade name, fictitious name or other trade name or trade style.

(l) Pledgor will not change its name in any manner which could make any financing or continuation statement filed hereunder seriously misleading within the meaning of Section 9-507(c) of the UCC (or any other then-applicable provision of the UCC) unless Pledgor shall have given Lender at least 10 Business Days' prior notice thereof and shall have taken all action (or made arrangements to take such action substantially simultaneously with such change, if it is impossible to take such action in advance) necessary or reasonably requested by Lender to amend such financing statement or continuation statement so that it is not seriously misleading.

(m) Pledgor shall not amend the Formation Agreement in contravention of the Loan Agreement or in any manner that would materially and adversely affect Lender's rights or remedies hereunder.

Section 11. Certain Covenants.

(a) No Disposition. Pledgor agrees that, except to the extent permitted under the Loan Agreement, it will not directly or indirectly sell, assign, transfer, exchange, encumber or otherwise dispose of, or grant any option with respect to, the Pledged Collateral, nor will it create, incur or permit to exist any security interest with respect to any of the Pledged Collateral, except for the Security Interest provided for by this Agreement.

(b) Delivery of Certificates and Instruments. Any and all certificates or instruments at any time representing or evidencing any Pledged Collateral shall be promptly delivered to and held by or on behalf of Lender pursuant hereto, and shall be in suitable form for transfer by delivery, or shall be accompanied by instruments of transfer or assignment, duly executed in blank, all in form and substance reasonably satisfactory to Lender. Lender shall have the right, at any time, after the occurrence and during the continuance of an Event of Default, to transfer to or to register in the name of Lender or its nominee any Pledged Collateral. In addition, Lender shall have the right at any time to exchange certificates or instruments representing or evidencing Pledged Collateral for certificates or instruments of smaller or larger denominations.

(c) Other Units. Pledgor has not and shall not permit the issuance of any units of membership interest, stock or partnership interest in Borrower, as applicable, or other securities in addition to or in substitution for the Equity Interests.

Section 12. Other Partners, Shareholders and/or Members Shall Join. Every member, shareholder or partner, as applicable, hereinafter admitted to Borrower as a successor or additional member, shareholder or partner (to the extent permitted under the Loan Documents) shall at Lender's request and as a condition thereto, join in this Agreement and agree to be bound by the terms and provisions hereof, pursuant to a written joinder and assumption agreement in form and substance reasonably satisfactory to Lender, and execute and deliver appropriate forms of assignment and other appropriate instruments indicating the Security Interest of Lender in the member's Pledged Collateral. The failure of any new member, shareholder or partner, as applicable, to execute and deliver the same prior to or contemporaneously with its admission as a member, shareholder or partner in Borrower, if such failure shall continue for 10 days after request by Lender, shall constitute an Event of Default hereunder and under the terms and provisions of the Loan Documents.

Section 13. Foreclosure Sales of Securities.

(a) No Obligation to Register. In exercising its remedies hereunder, Lender may be unable to sell Equity Interests publicly without registering them under the Securities Laws, which would likely be an expensive and time-consuming undertaking and, in fact, one which might be impossible to accomplish even if Lender were willing to invest the necessary time and money. Even though Lender may be able to register Equity Interests under the Securities Laws, it may nonetheless regard such registration as too expensive or too time-consuming (such determination to be made in Lender's sole discretion). If Lender sells Equity Interests without registration, Lender may be required to sell them only in private sales to a restricted group of offerees and purchasers who fulfill certain suitability standards and who will be obliged to agree, among other things, to acquire the Equity Interests for their own account for investment and not with a view to distributing or reselling them. Pledgor acknowledges that such a private sale may result in less favorable prices and other terms than a public sale. Pledgor agrees that a private sale, even under these restrictive conditions, will not be considered commercially unreasonable solely by virtue of the fact that Lender has not registered or sought to register the Equity Interests under the Securities Laws, even if Pledgor or Borrower agrees to pay all costs of the registration process.

(b) Right of Lender to Purchase at No-Action Public Sale. Pledgor is aware that Section 9-610 of the UCC states that Lender is able to purchase the Equity Interests only if they are sold at a public sale. Pledgor is also aware that SEC staff personnel have, over a period of years, issued various No-Action Letters that describe procedures which, in the view of the SEC staff, permit a foreclosure sale of securities to occur in a manner that is public for purposes of Part 6 of Article 9 of the UCC, yet not public for purposes of Section 4(2) of the Securities Act. Pledgor is also aware that Lender may wish to purchase the Equity Interests that are sold at a foreclosure sale. Pledgor specifically agrees that a foreclosure sale conducted in conformity with the principles set forth in the No-Action Letters (i) shall be considered to be a "public" sale for purposes of Section 9-610 of the UCC; and (ii) will not be considered commercially unreasonable solely by virtue of the fact that Lender has not registered or sought to register the Equity Interests under the Securities Laws, even if Pledgor agrees or Borrower agrees to pay all costs of the registration process.

(c) Intentionally Omitted

(d) General Standards Applicable to Foreclosure Sales. Pledgor agrees that Lender shall have no general duty or obligation to make any effort to obtain or pay any particular price for any Equity Interests sold by Lender pursuant to this Agreement (including sales made to Lender). Lender may, in its discretion, among other things, accept the first offer received, or decide to approach or not to approach any potential purchasers provided that any such foreclosure sale is conducted in a commercially reasonable manner.

(e) Further Assurances. Subject to Section 17(q), Pledgor shall use all reasonable efforts to do or cause to be done all such other acts and things (except that Pledgor shall not be obligated to register any Equity Interests under the Securities Laws) as may be reasonably necessary to make any sale or sales of Equity Interests valid and binding and in compliance with applicable laws, regulations, orders, writs, injunctions, decrees or awards of any and all courts, arbitrators or governmental instrumentalities, domestic or foreign, having jurisdiction over any such sale or sales, all at Pledgor's expense.

(f) Equitable Remedy. Pledgor agrees that a breach of any of the covenants contained in this Section 13 shall cause irreparable injury to Lender, and that Lender will have no adequate remedy at law in respect of such breach. As a consequence, Pledgor agrees that each and every covenant contained in this Section 13 shall be specifically enforceable against Pledgor.

Section 14. Reimbursement of Lender.

(a) Pledgor shall indemnify, reimburse, defend and hold harmless Lender and its officers, directors, employees and agents (collectively, the "Indemnified Parties") for, from and against any and all liabilities, obligations, losses, damages, penalties, assessments, actions, or causes of action, judgments, suits, claims, demands, actual third party costs, expenses (including reasonable attorneys' fees and legal expenses whether or not suit is brought and settlement costs) and disbursements of any kind or nature whatsoever which may be imposed on, incurred by, or asserted against the Indemnified Parties, in any way relating to or arising out of the making, holding or enforcement of this Agreement by Lender to the extent resulting, directly or indirectly, from any claim made (whether or not in connection with any legal action, suit, or proceeding) by or on behalf of any Person other than Lender; provided, however, that no Indemnified Party shall have the right to be indemnified hereunder for its own gross negligence or willful misconduct. The provisions of, and undertakings and indemnification set forth in, this Section 14 shall survive the satisfaction and payment in full of the Obligations and termination of this Agreement. Any amounts which may become payable by Pledgor pursuant to the foregoing indemnity shall be added to Pledgor's obligations hereunder and to the Obligations.

(b) Pledgor hereby covenants and agrees to reimburse Lender promptly upon receipt of written notice from Lender for all reasonable costs and expenses payable to third parties incurred by Lender in connection with (A) enforcing or preserving any rights, in response to third party claims or the prosecuting or defending of any action or proceeding or other litigation, in each case against, under or affecting Pledgor or this Agreement (except to the extent resulting from Lender's gross negligence or willful misconduct), and (B) enforcing any obligations of or collecting any payments due from Pledgor under this Agreement.

(c) In no event shall Lender be liable to Pledgor for any matter or thing in connection with this Agreement other than to account for moneys actually received by Lender in accordance with the terms hereof and any state of facts determined by a final nonappealable judgment of a court of competent jurisdiction to be caused by Lender's gross negligence or willful misconduct in connection therewith.

Section 15. No Waiver of Rights by Lender. Nothing herein shall be deemed (a) to be a waiver of any right which Lender may have under the Bankruptcy Code or the bankruptcy laws of any state to file a claim for the then outstanding amount of the Loan or to require that all of the Pledged Collateral shall continue to secure all of the Obligations; (b) to impair the validity of the Loan, the Loan Agreement, the Note, the other Loan Documents or any other document or instrument delivered to Lender in connection therewith; or (c) to impair the right of Lender to commence an action to foreclose any lien or security interest in connection with the exercise of its remedies hereunder. Nothing herein shall be deemed to be a waiver of any right which Lender may have under Section 506(a), 506(b), 111l(b) or any other provisions of the Bankruptcy Code to file a claim for the full amount of the indebtedness of the Loan and other amounts due under this Agreement, the Loan Agreement, the Note, or the other Loan Documents or to require that all of the Pledged Collateral shall continue to secure the Obligations.

Section 16. Irrevocable Proxy. Solely with respect to Article 8 Matters, Pledgor hereby irrevocably grants and appoints Lender, from the date of this Agreement until the termination of this Agreement in accordance with its terms, as Pledgor's true and lawful proxy, for and in Pledgor's name, place and stead to vote the Equity Interests, whether directly or indirectly, beneficially or of record, now owned or hereafter acquired, with respect to such Article 8 Matters. The proxy granted and appointed in this Section 16 shall include the right to sign Pledgor's name (as a member, shareholder or partner of Borrower, as applicable) to any consent, certificate or other document relating to an Article 8 Matter and the Equity Interests that applicable law may permit or require, to cause the Equity Interest to be voted in accordance with the preceding sentence. Pledgor hereby represents and warrants that there are no other proxies and powers of attorney with respect to an Article 8 Matter and the Equity Interests that Pledgor

may have granted or appointed. Pledgor will not give a subsequent proxy or power of attorney or enter into any other voting agreement with respect to the Equity Interests with respect to any Article 8 Matter and any attempt to do so with respect to an Article 8 Matter shall be void and of no effect. The proxies and powers granted by the Pledgor pursuant to this Agreement are coupled with an interest and are given to secure the performance of the Pledgor's obligations.

Section 17. Miscellaneous.

(a) Successors. Except as otherwise provided in this Agreement, whenever in this Agreement any of the parties hereto is referred to, such reference shall be deemed to include the successors and permitted assigns of such party, provided that Pledgor may not assign its obligations hereunder except as may be provided in, and in accordance with, the Loan Agreement. All covenants and promises and agreements in this Agreement contained, by or on behalf of Pledgor, shall inure to the benefit of Lender and its successors and assigns.

(b) Governing Law.

(1) THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK.

(2) ANY LEGAL SUIT, ACTION OR PROCEEDING AGAINST PLEDGOR OR LENDER ARISING OUT OF OR RELATING TO THIS AGREEMENT MAY BE INSTITUTED IN ANY FEDERAL OR STATE COURT IN NEW YORK, NEW YORK. EACH OF PLEDGOR AND LENDER HEREBY (I) IRREVOCABLY WAIVE, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY OBJECTION WHICH IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY SUCH SUIT, ACTION OR PROCEEDING BROUGHT IN SUCH A COURT AND ANY CLAIM THAT ANY SUCH PROCEEDING BROUGHT IN SUCH A COURT HAS BEEN BROUGHT IN AN INCONVENIENT FORUM, AND (II) IRREVOCABLY SUBMITS TO THE JURISDICTION OF ANY SUCH COURT IN ANY SUCH SUIT, ACTION OR PROCEEDING.

(c) Modification, Waiver in Writing. This Agreement may not be amended or waived, nor shall any consent or approval of Lender be granted hereunder, unless such amendment, waiver, consent or approval is in writing signed by Lender and (in the case of amendments) Pledgor.

(d) Notices. The provisions of Section 8.04 of the Loan Agreement are hereby incorporated into this Agreement by this reference to the fullest extent as if the text of such provisions were set forth in their entirety herein.

(e) Trial by Jury. The provisions of Section 8.05 of the Loan Agreement (as it relates to the waiver of jury trial by Pledgor and Lender) are hereby incorporated into this Agreement by this reference to the fullest extent as if the text of such provisions were set forth in their entirety herein.

(f) Principles of Construction. The provisions of Section 1.02 of the Loan Agreement are hereby incorporated into this Agreement by this reference to the fullest extent as if the text of such provisions were set forth in their entirety herein.

(g) Severability. The provisions of Section 8.09 of the Loan Agreement are hereby incorporated into this Agreement by this reference to the fullest extent as if the text of such provisions were set forth in their entirety herein.

(h) Offsets, Counterclaims and Defenses. All payments made by Pledgor hereunder shall be made irrespective of, and without any deduction for, any setoffs or counterclaims. Pledgor waives the right to assert a counterclaim, other than a mandatory or compulsory counterclaim, in any action or proceeding brought against it by Lender arising out of or in any way connected with this Agreement or the Obligations.

(i) No Joint Venture. The provisions of Section 8.13 of the Loan Agreement are hereby incorporated into this Agreement by this reference to the fullest extent as if the text of such provisions were set forth in their entirety herein.

(j) Counterparts. The provisions of Section 8.16 of the Loan Agreement are hereby incorporated into this Agreement by this reference to the fullest extent as if the text of such provisions were set forth in their entirety herein.

(k) No Third-Party Beneficiaries. This Agreement is solely for the benefit of Lender and Pledgor, and nothing contained in this Agreement shall be deemed to confer upon anyone other than Lender and Pledgor any right to insist upon or to enforce the performance or observance of any of the obligations contained herein or therein.

(l) Limitation on Liability of Pledgor; Exculpation. The provisions of Section 8.21 of the Loan Agreement are hereby incorporated into this Agreement by this reference to the fullest extent as if the text of such provisions were set forth in their entirety herein.

(m) Right of Set-Off. The provisions of Section 8.20 of the Loan Agreement are hereby incorporated into this Agreement by this reference to the fullest extent as if the text of such provisions were set forth in their entirety herein.

(n) Intentionally Omitted.

(o) Prior Agreements. The provisions of Section 8.24 of the Loan Agreement are hereby incorporated into this Agreement by this reference to the fullest extent as if the text of such provisions were set forth in their entirety herein.

(p) Further Assurances. Pledgor shall from time to time, at its expense, promptly execute and deliver (and/or cause to be executed and delivered) all further instruments and agreements, and take all further actions, that may be necessary or appropriate, or that Lender may reasonably request, in order to perfect or protect any assignment, pledge or security interest granted or purported to be granted hereby or to enable Lender to exercise or enforce its rights and remedies hereunder.

(q) Regulatory Matters. Notwithstanding anything to the contrary set forth in this Agreement or any other Loan Document, the Lender acknowledges that its rights, remedies and powers under this Agreement will be subject to any applicable laws, rules and regulations of the Gaming Authorities, including Gaming Laws, and that approvals, licenses and consents from the Gaming Authorities may be required in connection therewith.

[Signature appears on the following page]

IN WITNESS WHEREOF, Pledgor has executed and delivered this Pledge and Security Agreement as of the date first above written.

PLEDGOR:

EMPIRE RESORTS, INC., a Delaware corporation

By: /s/ Joseph D'Amato
Name: Joseph D'Amato
Title: Authorized Signatory

Exhibit 21.1

List of Subsidiaries of Empire Resorts, Inc.:

Name	State of Incorporation/Formation
Alpha Monticello, Inc.	Delaware
Alpha Casino Management Inc.	Delaware
Monticello Raceway Management, Inc.	New York
Montreign Holding Company, LLC	New York
Montreign Operating Company, LLC	New York
Empire Resorts Real Estate I, LLC	New York
Empire Resorts Real Estate II, LLC	New York

Exhibit 23.1

CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We hereby consent to the incorporation by reference in the following Registration Statements:

- Form S-3 Nos. 333-214119 and
- Form S-8 Nos. 333-208791 and 333-215484

of our reports dated March 13, 2017, with respect to the consolidated financial statements and schedule of Empire Resorts, Inc. and subsidiaries and the effectiveness of internal control over financial reporting of Empire Resorts, Inc. and subsidiaries included in this Annual Report (Form 10-K) of Empire Resorts, Inc. and subsidiaries for the year ended December 31, 2016.

/s/ Ernst & Young LLP

Philadelphia, Pennsylvania
March 13, 2017

Exhibit 31.1

CERTIFICATION PURSUANT TO SECTION 302
OF THE SARBANES-OXLEY ACT OF 2002

I, Joseph A. D'Amato, certify that:

1. I have reviewed this annual report on Form 10-K of Empire Resorts, Inc.;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

   a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

   b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

   c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

   d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

   a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

   b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: March 13, 2017

/s/ Joseph A. D'Amato

Joseph A. D'Amato

Chief Executive Officer

Exhibit 31.2

CERTIFICATION PURSUANT TO SECTION 302
OF THE SARBANES-OXLEY ACT OF 2002

I, Laurette J. Pitts, certify that:

1. I have reviewed this annual report on Form 10-K of Empire Resorts, Inc.;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

   a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

   b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

   c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

   d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

   a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

   b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: March 13, 2017

/s/ Laurette J. Pitts

Laurette J. Pitts
Executive Vice President, Chief Operating Officer
and Chief Financial Officer

Exhibit 32.1

CERTIFICATION PURSUANT TO SECTION 906
OF THE SARBANES-OXLEY ACT OF 2002

Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 (18 U.S.C. §1350), the undersigned, Joseph A. D'Amato, Chief Executive Officer of Empire Resorts, Inc., a Delaware corporation (the "Company"), and Laurette J. Pitts, Senior Vice President, Chief Operating Officer and Chief Financial Officer of the Company, do hereby certify, to his and her knowledge, that:

The Annual Report Form 10-K for the year ended December 31, 2016 of the Company (the "Report") fully complies with the requirements of section 13(a) or 15(d) of the Securities Exchange Act of 1934, and the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

By:	/s/ Joseph A. D'Amato
March 13, 2017	Joseph A. D'Amato
	Chief Executive Officer

By:	/s/ Laurette J. Pitts
March 13, 2017	Laurette J. Pitts
	Executive Vice President, Chief Operating Office and Chief Financial Officer

A signed original of this written statement required by Section 906, or other document authenticating, acknowledging, or otherwise adopting the signatures that appear in typed form within the electronic version of this written statement required by Section 906, has been provided to Empire Resorts, Inc. and will be retained by Empire Resorts, Inc. and furnished to the Securities and Exchange Commission or its staff upon request.